

or cost on the part of the Company. On this basis Mr. Strouse installed a single receiving set in a street car and a single receiver on a bus.

The "music as you ride" bus was operated on various lines at various hours of the day during the week of March 15, 1948 in order to get a cross section of experience. The car was operated on the Mt. Pleasant line during the week of March 22, 1948. During this period the passengers were polled by card as to their reaction to the "music as you ride" program.

At the end of the two-week period the cards were tabulated. They showed that 92 per cent of the bus and street-car passengers preferred "music as you ride." The cards used in the poll were distributed by students of George Washington University. They were tabulated under my supervision.

While the poll clearly indicated public preference for "Music as you ride," we felt the sets had not been perfected sufficiently to place more of them on the vehicles at that time. However, we showed interest in the experiment and on the basis of these tests continued talks with Mr. Strouse. In the meantime other cities were experimenting and the receiving sets were sufficiently improved to warrant further experimental installations.

On February 10, 1949, 10 sets were installed and broadcasting began. By February 18th twenty-one sets were installed, all on busses. As I stated before, the installations have been progressive since that date, the 212th set being installed on September 27th. Special programming began after the first installations.

Q. Will you please tell us the reasons that motivated the "music as you ride" installations beginning with the February 10, 1949, installations. A. There were two reasons: (1) We felt that our passengers would like the diversion of music as they rode, based on the 1948 survey; that it would help them pass the time more pleasantly, and that it would make their ride seem shorter.

(2) Another reason was our operating costs were rising and still are. As a matter of fact we showed deficits in July and August, 1949 and only a small net income in September.

We consider it part of our responsibility in providing good transportation at reasonable rates to explore and encourage every possible means of revenue even though it does not come directly from the rider. The advertising revenue that can be obtained from any "music as you ride" arrangement presents that opportunity. The money earned through this method is credited to our Gross Revenues and thus is reflected in our Operating Income. This relieves the passenger of paying the complete cost of his transit ride to the extent advertising revenues are earned.

In other words, for the privilege of advertising, the advertisers on transit radio help pay the cost of the ride to the transit rider. The earnings from this source we felt had important potentials and in the interest of our passengers we could not ignore it. We felt that we should
160 take advantage of this means to help relieve the pressing need for more revenue.

Q. Will you please tell us whether or not any contract was entered into with respect to the "music as you ride" installations in Capital Transit vehicles? A. Yes. A contract was entered into between the Capital Transit Company and Washington Transit Radio, Inc.

Q. I hand you a document headed "Agreement" and dated December 13, 1948. Is this document a correct copy of the contract you referred to in your previous answer? A. It is.

Mr. Awalt: Mr. Chairman, may I have this document marked as Company's Exhibit No. 1 for identification?

Chairman Flanagan: It will be so marked.

/Q. Mr. Giddings, will you briefly explain the financial arrangements set forth in this contract, known as Exhibit No. 1? A. Essentially it provides for a mini-
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mum payment of \$6 per month for each vehicle having a receiving set. As the gross income from advertising rises, the Company proportionately benefits. Inasmuch as this is a new media and is only in its beginning stages, there is no experience as to the ultimate potential return. We feel, however, that it can be very material and substantial if given the opportunity to progress.

Q. Now I understood you to testify that as of September 15, 1949 the total installed sets were 212? A. October 15, Mr. Awalt.

Q. October 15. On this basis, what is your present income from the "music as you ride" installations as of October 15, 1949? A. \$1272 a month or \$15,264 a year. This is based on the minimum \$6 a set as provided in the contract.

Q. Is it the intention of Capital Transit Company to install additional sets in other vehicles not new equipped?

A. Yes. We contemplate eventually a total installation of approximately 1500 sets.

Q. On the basis of 1500 sets, what would be your income from this source at the minimum rate of \$6 per set. A. \$9000 a month or \$108,000 a year.

Q. However, under the contract, I understand you to say that if gross income for advertising rises, the Company would benefit proportionately? A. Yes.

162
163 Q. Did the Company undertake to further these installations, as far as public acceptance was concerned, on the basis of the survey made by George Washington University Students early in 1948? A. No. Before firming any arrangements with Washington Transit Radio, and with their agreement, we jointly retained Edward G. Doody and Company, an independent research organization, to determine further public reaction. We wanted a survey broad enough to statistically reflect the attitude of all our riders. This was done during the week of April 1, 1949, after the programs had been regularly

broadcast from 7 a. m. to 7 p. m. weekdays and 7 a. m. to 3 p. m. on Saturdays on at least 21 vehicles since February 18, 1949.

The programs were of the same pattern used to-
 164 day; namely, selected music, news, weather and time reports interspersed with short commercials and public service announcements. The announcements averaged about 6 minutes out of every hour. Our instructions to Doody were specific and with one thought: Do the majority of our riders who have listened to the programs like "music as-you ride" or are they opposed?

Mr. Doody prepared a set of questions which he felt would objectively give us the answer to our questions. We wanted an unbiased answer before proceeding further.

A. Will you please tell us the result of that survey? A. The Doody survey indicated that an overwhelming majority favored "music as you ride."

Q. Following this survey, did your Company come to a conclusion as to further installations? A. Yes. This fact coupled with the substantial financial return which might result and which would be helpful in meeting the costs of providing transportation led us to the conclusion that the installations were in the interest of our patrons.

Q. Did you consider the minority objections to the installations? A. Yes. We realized there would be some objections but we took pains to see that the type of program was one that had good music as a base and of the type which has been suggested by Parent Teacher
 165 Associations, Women's Clubs and others. The commercials were not to exceed 60 seconds duration and be of a factual character. The news events and time signals are believed to be of general interest to all.

Perhaps, our greatest concentration to meet the possible objections of the minority was the standard set on musical selections. To that end we prevailed upon Washington Transit Radio to secure the transcription library which Muzak Corporation had available for this type of service. We felt in this instance that their long experience, knowl-

edge and reputation in music selection would meet the approval of the minority.

166 Q. Mr. Giddings, can you tell me whether any instructions have been given to the operators to turn off radio sets in any of the vehicles at any time? A. Yes, sir; they have such instructions in the event that they consider the set too loud, that is, playing too loud or something being wrong with it.

Q. Mr. Giddings, did you as vice president of the Capital Transit Company take up with the superintendent or head of the Police Department, the question of the need for a license under the Police Regulations? A. Yes, sir.

Q. What did they advise you? A. They advised me that they felt it was not within their jurisdiction or their responsibility.

Cross-Examination

168 By Mr. Pollak:

Q. Is there any other transit company which operates trolleys or busses in Washington to pick up the public in Washington and deposit it in Washington? A. Not to my knowledge. I am sorry, Mr. Pollak, there is one other company that does that.

Q. Which is that? A. The Washington, Marlboro and Annapolis Line.

169 Q. That picks up passengers in Washington and discharges them in Washington? A. Yes, sir.

199 *Redirect Examination*

By Mr. Awalt:

Q. One question, Mr. Giddings. You mentioned the Washington, Marlboro and Annapolis Line, I believe. Do you know whether they have radios on their buses? A. I understand so.

200 **Hulbert Taft, Jr.**, was called as a witness and, after having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dowd:

Q. Would you state your name and residence for the record, please? A. Hulbert Taft, Jr., Cincinnati, Ohio.

Q. What is your occupation, Mr. Taft? A. I am executive vice president of Radio Cincinnati, Inc., a company which operates a standard broadcast station, television station, and a transit radio station.

Q. Do you have any connection with Washington Transit Radio, Inc., or Capital Transit Company? A. I do not.

Q. You mentioned that your company operated a broadcasting station and transit radio receivers. Where is that operation? A. That operation is in Cincinnati, Ohio.

201 Q. Mr. Taft, you mentioned that you are interested in the transit radio operation in Cincinnati. Do you have any knowledge as to any other cities that may have this type of operation? A. Yes, I do.

Q. Would you name them, please? A. Transit radio is now in operation in Cincinnati, Ohio; Houston, Texas; Baltimore, Maryland; St. Louis, Missouri; Wilkes-Barre, Pennsylvania; Evansville, Indiana; Topeka, Kansas; Des Moines, Iowa; Worcester, Massachusetts; Tacoma, Washington; Allentown, Pennsylvania; Huntington, West Virginia; Suburban Pittsburgh; and Washington.

Q. Do you have any information as to how long transit radio has been in operation in those cities and how many sets may be in use at the present time? A. Yes, I can give you the complete information on that. Cincinnati was the first operation beginning July 10, 1948. There are now 475 vehicles equipped in Cincinnati.

Commissioner Lauderdale: Do you know the total number of vehicles in the cities?

The Witness: Yes.

Commissioner Lauderdale: Would you mind giving that?

The Witness: I can do that by cities and give you the total.

There are 2,945 vehicles equipped in these cities.

Mr. Dowd: I think what the Commissioner was interested in knowing, for instance, in Cincinnati you state you have 475 receivers. What is the total number of vehicles in Cincinnati?

The Witness: It is approximately 50 per cent of the total vehicles. It is about 80 per cent of the total available vehicles, by which I mean that in the old-fashioned street cars transit radios are not feasible because of the high noise level in those cars. We are installing them in about 80 per cent of the vehicles which we believe to be suitable for this purpose.

In Houston, Texas, there are 270 equipped vehicles; in St. Louis, approximately a thousand; in Wilkes-Barre, about a hundred; Evansville, 110; Washington, 220 suburban Washington, 30; Topeka, 50; Des Moines, 50; 203 Worcester, Massachusetts, 220—incidentally a complete installation; Tacoma, Washington, 135; Allentown, 75; Huntington, 55; suburban Pittsburgh, 75.

By Mr. Dowd:

Q. Did you mention Covington at any time? A. I include Covington in the Cincinnati figures.

Q. Is that a separate transit company? A. There are actually three companies: the Northern Kentucky, which operates into Cincinnati, is the Covington, Newport and Cincinnati Traction Company, the Green Lines—that is a complete installation, all of those except for 12 street cars.

Q. As the person in charge of the operation in Cincinnati, do you have any personal knowledge as to the acceptance by the public of transit radio in that city? A. Yes, of course. Four different surveys have been made in Cincinnati, including northern Kentucky. Before the Cincinnati Street Railway Company or the Green Lines en-

tered into a contract with us, they were very insistent that as complete a tabulation of rider opinion be obtained as possible. Obviously we were just as much concerned, we were perfectly aware that without a large measure of public support the whole project would fall to the ground. Therefore before a contract was drawn with either of these companies, more than 5,000 ballots were taken on a 204 random basis in the vehicles in those two cities and we obtained over 90 per cent favorable replies."

After three months of operation we made a recheck and took about 1,500 ballots and the result was very much the same. Only two or three months ago, after a complete year of operation, in order to determine what the continued thought of the public was, we took a third survey with almost an identical figure in favor.

Mind you, we are as aware of public acceptance as anybody else is. We can not possibly succeed unless we have a very considerable majority who favor it.

Q. Mr. Taft, have you received any information from any of the cities in which transit radio has been in operation which indicates that the installation may or may not have any effect on the safety of operations in those cities?

A. Yes. In Cincinnati, although no specific survey has been made, the safety director of the Cincinnati Street Railway Company has advised us that in no sense has radio in buses contributed to accidents in one year of experience. The figures in Cincinnati show that for the first eight months of 1949 as against the same period in 1948 there was a 13.3 per cent decrease in traffic accidents involving public vehicles.

Q. You are not maintaining, are you, Mr. Taft, that that 13.3 decrease is due solely to the installation of

205 radios? A. No, I am not maintaining that. I don't think sufficient information is available either in Cincinnati or in the other cities in which we are in operation to prove that definitely. I think the figures there and in other cities certainly do prove that there is no increase

in accidents because of radio and I think there is some indication that the accident rate tends to decline, although I certainly could not prove it, where radios are in the buses.

Q. Do you have any figures in reference to Covington where you say you have an almost complete installation?

A. Yes. I think it may be of some interest in Covington we have 112 out of 127 vehicles equipped. The only unequipped vehicles are old-fashioned street cars. They have been equipped since July 10, 1948. In other words, for considerably over a year almost a complete installation.

In the first six months of 1949 as against the same period in 1948 traffic accidents were down 31.7 per cent under the previous period, comparable period.

I think it is also interesting to note that Covington was one of the safety winners, was one of the three winners in its size class of the annual safety award.

Mr. Harrison: May I ask if that 31.7 per cent decline in Covington related to public transportation vehicles?

The Witness: Yes.

206 Mr. Pollak: Exclusively?

The Witness: Yes.

By Mr. Dowd:

Q. That related solely to the accident figures for the transit company in which these radios had been installed as against their previous period of operation? A. That is correct.

215 R. L. Willoughby was called as a witness and, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Awalt:

Q. Will you please give your name and address for the record? A. R. L. Willoughby, 4425 14th Street N. W. Washington, Apartment 32.

Q. Mr. Willoughby, are you employed by Capital Transit Company? A. Yes.

Q. How long have you been in the employment of Capital Transit Company? A. Twenty-four years.

Q. What is your present position with Capital Transit Company? A. Supervisor and instructor.

Q. How long have you been occupied in this position? A. Thirteen years.

Q. Will you please briefly explain your duties? A. I instruct new operators in the operation of both street cars and buses during their initial training and I instruct new operators during their 90-day probationary period. I also check and observe operators who have had complaints made against them or who have had an accident record. I also make recommendations as to the ability of operators.

Q. What proportion of your time is spent on instruction work and what proportion on checking and observing operators who have had accidents or complaints made against them? A. Approximately 10 per cent on initial instruction, 65 per cent on probationary work, and 25 per cent on complaints and accident work.

Q. When you say that you check and observe operators who have had complaints made against them or who have been in accidents, what exactly do you mean, Mr. Willoughby? A. The procedure would vary, depending on the particular case, but as the usual thing, I board a bus or street car which is being driven by the operator against whom complaints have been made or who has had an accident. I

observe the operator while he is operating the vehicle. I observe his reflexes, his general operation and technique. I point out to him any faults that I may see in his method of operation. I also discuss with him the complaint or complaints that have been made against him or the reasons that caused an accident. In general, I attempt to improve both his attitude and his operation.

Q. Were you at one time an operator yourself? A. Yes, I was and I now give demonstrations in operating street cars and buses.

Q. In checking an operator who has had an accident, do you go thoroughly into the stability of the operator? A. Yes. I check to see whether the operator is having domestic trouble, financial trouble, or if there is anything worrying him that would affect his general stability.

Q. Have any of the operators on whom you have checked as to complaints or accidents operated at any time radio-equipped buses or street cars? A. Yes.

Q. In the course of your checking, your official duties, have you ever had operators tell you that an accident or complaint made against them was caused by the reception over the radio sets in the street cars or buses which they operated? A. No.

Q. In your operation of street cars and buses for
218 demonstration purposes have you operated buses or street cars equipped with radio receivers? A. Yes, I have operated both street cars and buses so equipped.

Q. Did you find that the reception from these radio-equipped buses or street cars in any way interfered with your operation or have you ever felt they affected the safety of our operation? A. I have never found that they interfered with the operation, nor do I believe that they have affected in any way the safety of such operation.

I might add that I am not conscious of the program which is being received.

Mr. Awalt: You may cross-examine.

Cross-Examination

By Mr. Harrison:

Q. Mr. Willoughby, are you able to hear ordinary traffic signals when you are operating a street car or bus equipped with a radio receiver? A. I certainly can.

Q. Are you able to hear the signal bells on the vehicle, the call bells to stop? A. I certainly can.

Q. Is there a receiver near the driver of the vehicle?

219 A. I am not too familiar with the location of the receivers but I think there is one a few feet in back of him.

Q. Has the reception in any way interfered with your operation of a street car or bus? A. It certainly has not.

Q. What is there about it that might interfere, if it did interfere? A. I don't know of anything. I don't give it any attention.

Q. Have you found that the volume is too great? A. No, I haven't.

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Cross-Examination

A By Mr. Pollak:

Q. How much time have you spent yourself driving vehicles which have radios installed in them? A. I
220 have no record of that but I would say I have driven about 20 a month, 20 buses or cars so equipped.

Q. Each month? A. Each month.

Q. How much time do you spend in those on the average roughly on such occasions? Is it an hour or a day? A. two or three hours roughly.

Q. Did you ever ask drivers of street cars whether they liked these radio installations? A. I have, especially so since this investigation started.

Q. What have they answered? A. Most of them said that they liked it and some of them said it didn't affect them one way or the other.

Q. Did some of them say they did not like it? A. No, I haven't had a single one who said he didn't like it?

Q. When you drive these buses yourself, or trolley cars, with the radio installations, do you call out the streets which you are coming to? A. I do.

Q. Do you find that extra effort is required to call them out when the radio is playing and the buses are stopped for traffic, for example? A. No, just the usual tone.

Q. Are the radios installed in training vehicles?
 221 A. Yes, we use them if there are any available at the time.

222 E. L. Keller was called as a witness and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Awalt:

Q. Will you please give your name and address: A.
 E. L. Keller, 4423 Chesapeake Street, N. W.

Q. Are you employed by Capital Transit Company? A.
 Yes.

Q. What is your present position? A. I am instructor in the operation of buses and street cars.

Q. Will you please explain your duties in more detail?
 A. After operators have finished their initial training, they enter a probationary period of 90 days during which time it is my duty to follow up with instructions to those operators assigned to me during that 90-day period. I also make recommendations on the operator's ability to perform his duties.

During this work I of course ride transit vehicles most of the time. I also have occasion, since I use transit vehicles getting to and from the various assignments, to observe other operators in the operation of their vehicles.

Q. How long have you been employed by Capital
 224 Transit Company? A. Nine and one-half years.

A. How long have you been in your present position? A. Four years.

Q. Before taking your position, were you an operator of vehicles on the Capital Transit System? A. Yes.

Q. In the course of your duties do you now operate Capital Transit vehicles? A. Yes, I do. It is part of my instruction work.

Q. In the course of your duties do the operators you instruct and those you observe in riding the street cars and buses operate radio-equipped vehicles? A. Yes.

Q. From your observations of the operators on these vehicles equipped with radio receivers do you find that the operation is in any way interfered with by the reception over the radio speakers? A. No.

Q. From your observation do you or do you not believe that the safety of the operation of the vehicle equipped with radio receiver is in any way impaired by the reception received from such receiver? A. From my observation I believe that the safety factor is not in any way interfered with by the reception received over the radio receivers.

Q. Have you in the course of your duties talked to any of the operators as to whether or not they like or dislike to operate vehicles equipped with radio receivers? A. Yes, I have talked to about 100 operators who have operated vehicles equipped with radio receivers and almost without exception they like to drive the vehicle so equipped.

Q. You stated that as part of your duties in connection with instructions that you actually operated vehicles. Were any of these vehicles equipped with radio receivers? A. Yes.

Q. During your operations were programs being received over the radio receivers? A. Yes, in a great many cases.

Q. Did you find that such programs in any way interfered with your efficient operation of the vehicle? A. No.

Q. Would you prefer to operate a vehicle equipped with a radio receiver rather than one not so equipped? A. I would prefer the one equipped with the radio receiver.

Q. Why? A. I find that the public in general is in a better mood.

Mr. Awalt: You may cross-examine.

By Mr. Harrison:

Q. In the operation of radio-equipped buses or street cars are you able to hear the traffic signals such as given by police officers or automobiles blowing their horns? A. Yes, sir.

Q. Does the sound interfere in any respect with the hearing of such signals? A. No, sir.

Q. Are you able to hear the stop bell on the vehicle? A. Yes.

Q. Have you ever observed whether or not a person who asked for street directions or where to get off a vehicle has been unable to be heard either by the driver or the driver has been unable to hear the question? A. No sir, I have not.

Q. Has that matter ever come to your attention at all? A. Not where the operator could not hear the passenger, no sir.

Q. In riding on one of the vehicles as an instructor what is your position in relation to the driver, near or far away?

A. Near.

Q. Is it on the seat immediately behind him? A. On either side of the car.

227 Q. Have you ever driven a vehicle occupied by school children? A. Yes, sir.

Q. Which is more distracting to the driver, the sound of school children or the sound of the radio reception? A. School children.

Q. Have you observed the normal tone of voice between passengers talking amongst themselves and the radio reception to see which may be louder, to see if one interfered with the other? A. I notice the tone of the people's voice much more than the radio because I do not pay any attention to that.

Q. You mean it is louder than the radio? A. I think you could distinguish the voice more clearly.

Q. Did the radio sounds interfere with your discussion with the driver when you were instructing him in any way?

A. No, sir.

Q. Do you have to speak in a louder tone of voice than you do on a vehicle not so equipped? A. No, sir.

229 I. S. Nichols was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Awalt:

Q. Will you please state your full name and address?

A. I. S. Nichols, 6007 Ryland Drive, Bethesda, Maryland.

Q. Are you employed by Capital Transit Company? A. Yes, sir.

Q. What is your present position? A. I am supervisor-instructor on car operation.

Q. When you say car, you mean street cars? A. Street cars, yes sir.

Q. Will you please explain your duties in more detail?

A. After operators have finished their initial training, they enter a probationary period of 90 days during which time it is my duty to follow up with instructions to those operators during that 90-day period. I also make recommendations on operator's ability to perform his duties. During this work I ride street cars most of the time. I also have occasion, since I use transit vehicles getting to and from various assignments, of observing other operators in their operation of their vehicles.

230 Q. How long have you been employed by Capital Transit Company? A. Twenty-six years.

Q. How long have you occupied your present position? A. Eleven years.

Q. Before taking your present position, were you an operator of vehicles on the Capital Transit System? A. Yes, sir.

Q. In the course of your duties do you now operate Capital Transit vehicles? A. Yes, sir.

Q. In the course of your duties do the operators you instruct and others you observe in riding street cars and buses operate radio-equipped vehicles? A. Yes, sir.

Q. From your observations of the operations on those vehicles equipped with the radio receivers do you find that the operation is in any way interfered with by the reception over the radio speakers? A. No, sir.

Q. From your observation do you or do you not believe that the safety of the operation of vehicles equipped with radio receivers is in any way impaired by the reception received from such receivers? A. From my obser-

231 vation I believe that the safety factor is not in any way interfered with by the reception received over the radio receivers.

Q. Have you in the course of your duty talked to any of the operators as to whether or not they liked or disliked to operate vehicles equipped with radio receivers? A. Yes. I have talked to at least 200 operators who have operated vehicles equipped with radio receivers and almost without exception they like to drive cars and buses so equipped. I might say that in the early days there were some few complaints by operators with respect to loudness but in the last month or so I have not had these complaints.

Q. Mr. Nichols, you stated that as part of your duties in connection with instructions you actually operated vehicles. Were any of these vehicles equipped with radio receivers? A. Yes.

Q. During your operation of these vehicles were programs being received over radio receivers? A. Yes, in many cases.

Q. Did you find that such programs in any way interfered with your efficient operation of a vehicle? A. No.

Q. Would you prefer to operate a vehicle equipped with radio receivers rather than one not so equipped?

A. I would prefer to operate one with the radio
232 receivers.

Q. Why? A. Because it has a tendency to keep the passengers in a better mood and they are easily handled that way. It also makes it easier on the operator himself.

Mr. Awalt: You may cross-examine.

Cross-Examination

By Mr. Harrison:

Q. Did you find in your own operation of radio-equipped vehicles, Mr. Nichols, that the sound from the receivers distracted your attention to your driving? A. No, sir.

Q. Does it tend to fatigue you, listening to the constant drumming out of music, news announcements, weather reports? A. No, sir, it did not because I don't allow it to interfere with my work. When you are driving a street car your duties require your full attention and as far as the radio is concerned you don't even know it is there.

Q. In operating such vehicles could you hear the street signals such as a policeman's whistle or horns on an approaching vehicle? A. Yes, sir.

Q. Have you operated street cars with school children on them? A. I have sir.

Q. Have you operated such a vehicle equipped with radio? A. Yes, sir.

Q. Which is louder, the school children or the radio? A. Naturally the school children are.

Q. Have you ever observed whether or not the radio reception interfered with conversation of passengers? A. No, sir.

Q. Have you observed whether or not the tone of the passenger is below or higher than that of the radio? A. No, sir, I have not.

Q. Have you ever had complaints from passengers on your street car of the noise from the radio? A. Not that I can recall. I don't remember of any one instance.

Mr. Harrison: Thank you, Mr. Nichols.

Cross-Examination

By Mr. O'Dea:

Q. You say the radio makes it easier on the bus operator or street car operator? A. Not exactly the radio makes it easier. When you have a bunch of passengers who are congenial, friendly, that has a tendency to make your work easier as an operator.

Q. And the radio makes the passengers congenial?
234 A. That is my idea.

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K. C. McCloskey was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Awalt:

Q. Will you please give your name and address? A. K. C. McCloskey, 2821 63rd Place, Cheverly, Maryland.

Q. Are you employed by Capital Transit Company? A. Yes, sir.

Q. How long have you been in the employment of the company? A. Seven years.

Q. What is your present position with the company?
235 A. Safety supervisor.

Q. How long have you occupied that position? A. Five years.

Q. Will you please explain your duties? A. As my title indicates, I am principally charged with the question of safety with respect to the operation of street cars and buses. I am interested in preventing accidents of any kind or nature connected with buses or street cars and for this reason, among other things, I visit any place where an accident has occurred. I go into the reasons for such accidents, whether such accidents could have been prevented. I talk with operators as to the prevention of accidents, whether there are any hazardous points on their routes and whether anything can be done to protect these hazardous points.

I have a general knowledge as to the cause of accidents. I also give short talks on safety to public bodies such as citizens' associations, luncheon clubs, schools, parent-teacher associations and so forth with illustrating motion pictures.

Q. Mr. McCloskey, have you ever been an operator of a street car or bus? A. Yes, sir.

236 Q. In the course of your duties do you ever now operate a street car or bus? A. Yes, I do in order to check the safety factors.

Q. What was your reaction when you first learned that radio receivers were to be installed on street cars and buses of the Capital Transit Company? A. I was opposed to such installation. I felt that radio reception would interfere with the efficient operation by operators of street cars and buses and would decrease the safety factor.

Q. Do you still feel the same way? A. No sir, I do not. I have found in my study of accidents or safety factors that the radio does not in any way interfere with the efficient operation and I have found that it has not been the cause of any accidents.

Q. Have you talked to any of the operators with respect to the operation of radio-equipped vehicles? A. Yes, I have talked to approximately 500 operators and I have found only one who was opposed to the radio.

Mr. Harrison: You said only one?

Mr. Awalt: Yes.

By Mr. Awalt:

Q. Have you found in your own operation of radio-equipped vehicles that the program received distracted your attention in any way from the operation of the vehicle? A. No, I have not.

237 Q. Mr. McCloskey, where in your opinion do the greatest number of traffic accidents occur in the District of Columbia? A. In what is known as the congested business section. By congested business section

I mean the area of about eight blocks long and six wide, bounded on the east by 7th Street, Northwest; on the west by 15th Street, Northwest; on the south by Pennsylvania, Northwest; and on the north by New York Avenue, Northwest. The area is approximately one square mile.

Q. When you say the greatest number, what exactly do you mean? A. I mean the area I just described as compared with any area of similar size in the District.

Q. What is the approximate area of the District of Columbia? A. Approximately 68.9 square miles.

Q. What percentage of Capital Transit traffic accidents occur in this one-square-mile area as compared with the 68.9 square miles area of the entire District of Columbia?

A. Approximately 11 per cent.

Q. Do you know the number of lines on which radio-equipped vehicles are used that travel into or through this congested business section? A. Yes sir, 32 enter or travel through such area out of the 43 lines on which radio-equipped vehicles run, or about 76 per cent. Eleven do not travel in the congested business section as defined by me.

Q. Of all the lines running into this congested section, how many lines do not have radio equipment? A. Of the 39 lines entering such area, seven lines do not have any radio equipment.

Q. Then, as I understand your testimony, the 39 lines, of which 32 have radio equipment on them, are subject to a greater traffic hazard than those not entering the congested business section? A. Yes, sir.

Q. In your opinion in any comparison of traffic accidents, should weight be given to the fact that about 76 per cent of the lines which have radio-equipped vehicles on them enter the congested business area? A. Yes, sir.

Q. How many lines are there in the Capital Transit System? A. Approximately 121.

Q. Am I correct then in understanding your testimony to be that Capital Transit lines total 121, of which 43, or 35

per cent, have radio equipment; that of the 43, approximately 76 per cent enter or travel through the congested business area as defined by you; and of the 78 lines on which there are no radio equipment, seven lines, or less than 10 per cent of the non-radio-equipped lines,

239 enter or pass through the area defined by you? A.

Your understanding of my testimony is correct, which also means that 76 per cent of the radio-equipped lines are exposed to a greater accident hazard than those not so equipped, the latter exposure being about 10 per cent.

Q. Have you made available to you information maintained by the Office of Director of Traffic as to the increase of traffic congestion in the District of Columbia? A. Yes, sir.

Q. Did you acquire this information as part of your official duties? A. Yes, I do as a regular part of my duty in order to keep abreast of any condition which affects the safe operation of the company's vehicles.

Q. What does that information show as to increase in vehicle traffic entering the District in recent periods? A. It shows an increase of about 10 per cent for 1949 over 1948, and an increase in the number of registrations of motor vehicles within the District for 1949 of 13,789 over 1948 up to September 30, or approximately a 9 per cent increase.

Q. What conclusion do you draw as to these figures? A. This creates a greater traffic hazard and greater exposure to accidents.

Mr. Awalt: You may cross-examine.

240 *Cross-Examination*

By Mr. Harrison:

Q. Mr. McCloskey, did you hear Capt. Johnson of the Inspector's Office and Police Department testify yesterday?

A. Yes, I did.

Q. Do you remember his stating that since July there had been 180 accidents involving street cars? A. Yes, sir.

Q. And 26 of them were equipped with radios? A. Yes, sir.

Q. Did you investigate those accidents? A. I wouldn't say I investigated the particular accidents, no.

Q. Did you investigate the cause of those accidents in those cases? A. I couldn't say as to any individual accident. My job is to talk to every operator I possibly can regarding accidents and I don't pay any attention, you might say, to an individual accident unless it is serious.

Q. Did anybody from your Safety Department make an investigation to see whether or not the use of radios on the street cars or buses involved in accidents, about which Capt. Johnson testified, caused the accidents? A. I am the only one in my department and my job is to try to find
241 the causes of accidents and then offer recommendations to the company for the elimination of such hazards.

Q. So, your information is first-hand, is it? A. That is right. And in the course of talking to operators where there was a radio-equipped vehicle involved in an accident I have asked them, did the radio cause that accident, and they have all thus far answered No.

Q. Have you yourself operated radio-equipped vehicles? A. Yes, sir, I have.

Q. Have you been able to hear the traffic signals over the radio sounds? A. Very plainly.

Q. Did you observe whether or not passengers could be heard making inquiries as to the location of streets? A. In my opinion they can.

Q. I think you testified in your original testimony that you had not found that the radio had caused a single accident. Was my understanding of your testimony correct? A. That is correct, yes sir.

242 **Max F. Ryan** was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Awalt:

Q. Will you please state your name and address for the record, Mr. Ryan? A. Max F. Ryan, 8209 Queen Anne Drive, Silver Spring, Maryland.

Q. Are you employed by the Capital Transit Company? A. Yes, sir.

Q. What is your position with the Capital Transit Company? A. I am chief clerk in the Claims Department.

Q. As chief clerk in the Claims Department, do you have access to the records of traffic accidents occurring on Capital Transit buses and street cars? A. Yes, sir.

Q. Have you had prepared under your direction and supervision, based on Capital Transit records, a study of the ratio of traffic accidents operated by Capital Transit on the rate of accidents per 100,000 miles? A. Yes, sir.

Mr. Awalt: Mr. Chairman, may I ask that this document be marked for identification as Company's Exhibit No. 2? Chairman Flanagan: It may be so marked.

(The document above referred to was marked Company Exhibit No. 2 for identification.)

By Mr. Awalt:

Q. I hand you a document headed "Rate of Traffic Accidents per 100,000 miles Transit Vehicles, First Nine Months 1949 and 1948," Company Exhibit No. 2 for identification, and ask you whether this is the document prepared for which you have responsibility. A. Yes.

Q. Will you please explain this exhibit? A. This exhibit shows the number of traffic accidents that occurred on all vehicles from January 1 through September 30, 1949, the rate being 9.99 accidents per 100,000 miles. It shows the rate of traffic accidents for the same period in 1948 to be 9.54 accidents per 100,000 miles of operation, which is an increase in 1949 over 1948 of .45 or 45/100ths of one percent per 100,000 miles.

Q. Do I understand this exhibit covers the traffic accidents over the entire system of Capital Transit Company?

A. Yes, sir.

Q. Have you had prepared under your direct supervision a study showing the traffic accidents occurring on radio-equipped vehicles from February 10, 1949 to September 30, 1949, compared with the same vehicles not equipped with radios for the same period in 1948? A. Yes sir, I have.

Q. I hand you a document headed "Rate of Traffic Accidents Per 100,000 Miles on Radio Operated Vehicles From 2/10/49 to 9/30/49, Compared With Same Vehicles For Same Period 1948." Was this document I have just described prepared under your direction? A. Yes, sir.

Mr. Awalt: Mr. Chairman, may I ask that this document be marked as Company's Exhibit No. 3 for identification?

Chairman Flanagan: It may be so marked.

245

(The document above referred to was marked Company Exhibit No. 3 for identification.)

Mr. Harrison: Mr. Awalt, I did not hear the exact description, but does that mean that Exhibit No. 2 relates to accidents on vehicles not equipped with radios?

Mr. Awalt: Company's Exhibit No. 2 represents the accidents on all vehicles of the Capital Transit Company, including those equipped and not equipped, for the comparative period of nine months of 1948 and 1949.

Mr. Harrison: Thank you.

By Mr. Awalt:

Q. Mr. Ryan, will you please explain the exhibit and the procedure that was used in making this exhibit? A. In making this study we listed by number all the vehicles which were equipped with radio receiving sets from February 10, 1949 to September 30, 1949. From our records we then determined the number of traffic accidents which this group of vehicles had up to and including September 30 of this year. We then calculated the number of miles operated by these vehicles from the date of installation of the radio

receiving sets to September 30, 1949. So we arrived at a rate of traffic accidents per 100,000 miles. We also calculated in the same manner the number of accidents on the same vehicles as a group for a like period for the year 1948 when not radio equipped.

The over-all figure for 1949 is 8.81 accidents per 100,000 miles of operation of radio-equipped vehicles and for 1948 the over-all figure is 8.96 accidents per 100,000 miles of operation of the same vehicles not radio equipped. This is a decrease of .15 or 15/100ths of an accident per 100,000 miles.

Q. Then do I understand from these two exhibits that the over-all traffic accident rate for the entire system increased in 1949 45/100ths of an accident per 100,000 miles and that on the radio-equipped vehicles compared with the same operation for the same vehicles not radio equipped in 1948, there was a decrease of 15/100ths of an accident per 100,000 miles? A. That is right.

Q. Do I also understand from these exhibits that the over-all traffic accident rate for the entire system for 1949 is 9.99 accidents per 100,000 miles and on the radio-equipped vehicles for 1949 the over-all traffic accident rate is 8.81 per 100,000 miles? A. That is correct.

Q. Then do I understand that the traffic accident rate per 100,000 miles on the radio-equipped vehicles is less than the traffic accident rate per 100,000 miles on all the vehicles operated by Capital Transit for 1949? A. That is correct, it is 1.18 less accidents per 100,000 miles.

Q. During what hours do the programs on the radio-equipped vehicles operate? A. They only operate between 7 a. m. in the morning and 7 p. m. in the evening and they do not operate on Sunday.

Q. In giving the figures on Exhibit 3 as to traffic accidents on the radio-equipped vehicles, they include traffic accidents when the radio was not in operation? A. That is right. Twenty-seven per cent occurred after 7 p. m. and before 7 a. m. when the radios were not operated.

Q. Or on Sundays? A. Or on Sundays.

Q. In other words, as I understand it, the 27 per cent includes on weekdays the time that the radio was not operating between 7 p. m. and before 7 a. m. and also includes accidents that happened on Sunday when the radio was not operated? A. That is right.

Q. Were you present yesterday when Capt. Johnson of the Police Department testified? A. Yes sir, I was.

Q. I find that he stated, and I refer to page 6 of the transcript of yesterday's hearing:

"Since the 1st of January there have been 57 248 traffic fatalities, 10 of which have been caused or involved street cars and seven of which involved buses. Only one of those 17 was radio equipped at that time."

Did you hear that? A. Yes sir, I did.

Q. Have you examined the records of Capital Transit Company to ascertain at what time this accident occurred? A. Yes, sir.

Q. I am speaking of the one fatality on radio-equipped vehicle. A. That is right.

Q. What time did it occur? A. It occurred at 12:25 a.m.

Mr. Harrison: That is when the program was not on?

The Witness: That is right, it was not operated.

Mr. Awalt: You may cross-examine.

Mr. Harrison: I have no questions.

Cross-Examination

By Mr. O'Dea:

Q. Mr. Ryan, I am curious as to the figures on July, August and September, why they are so much larger than the other months. Do you have any explanation for that? A. Yes, sir. We had more vehicles equipped in those months.

You see, we have been equipping them periodically. 249 We installed in February. You notice as we equip the vehicles the accidents rise and when you get up to July we had—I don't know how many but we had quite a few more than we had in February, so that the accident

rate went up. In September that is also true because we then had 212 vehicles equipped, the accidents rose with the increase in the number of radio-equipped vehicles.

Mr. O'Dea: Thank you, sir.

Redirect Examination

By Mr. Awalt:

Q. I understood you to say the accidents increased but the rate did not increase, did it? A. I did not compute the rate by months.

Q. But the over-all rate did not? A. I just said the number of accidents increased naturally because the number of vehicles increased.

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250 . **Andrew Sarkady** was called as a witness and having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Awalt:

Q. Will you please give your full name and affiliation?
A. Andrew Sarkady. I am Director of Research for Edward Doody and Company, 911 Locust Street, St. Louis, Missouri.

I am also Assistant Professor of Market Research at Washington University at St. Louis, Missouri.

• Q. What is your educational background? A. I am a graduate of Princeton University and did postgraduate work at Rutgers University.

Q. What do you teach at the Washington University of St. Louis? A. Market Research which is the study of personal opinion surveys and market surveys.

Q. How long have you been employed by the Doody Company? A. Three years.

251 . Q. Where were you employed previously? A. Crossley, Incorporated, a New York City Research Company, and prior to that I was Regional Supervisor of

U. S. Bureau of the Census, Middle Atlantic and New England States for four and one-half years.

Q. What were some of your responsibilities at the Census Bureau? A. Administration and direction of field office, training and supervising personnel, adapting and applying the principles of random-sampling throughout the Middle Atlantic and New England States as well as Washington, D. C.

Mr. Pollak: What samples?

The Witness: Applying the principles of random sampling throughout the Region.

By Mr. Awalt:

Q. Does this mean you planned the sample and supervise surveys made here in Washington, D. C.? A. Yes, it does.

Q. What kind of surveys were they? A. They varied, they were Labor Force studies, housing studies and railroad passenger traffic surveys as well as consumer requirement studies for the War Production Board.

Q. Were these studies made for private industry or were they made for government agencies? A. Those were all for the government.

252 Q. Did you plan the sample on both the April and October studies that the Doody Company made on "Attitude of Capital Transit Company Customers toward transit radio"? A. Yes, sir; I did.

Q. Will you please state how you did so? A. The objective in planning the sample was to adhere as closely as possible to the rules of random selection. By random selection is meant that each person or item in a survey has an equal opportunity to fall into the sample. It has been proven by quality control, market and opinion surveys, and other probability studies that by random selections, from any group of items or people a representative sample of the subject matter would be obtained.

When this random process of selection is followed, the degree of accuracy of the sample can be measured.

Based on this mathematical fact, and in the absence of known data about the characteristics of the transit public at any given time, random sampling was decided upon as the most accurate and scientific method of evolving a cross-section and reflection of passenger attitude.

The lines on which the surveys were made were those where radio-equipped vehicles were operating since it was the logical place to find people exposed to the medium.

The division between total bus and streetcar interviews is an immaterial factor really under the rules of 253 random selection. However, a division was made on the basis of the ratio of equipped busses to equipped streetcars for several reasons: One, to provide some guide for the field work; two, to establish a sufficient sample for comparing April and October bus results specifically, and three, continue our study of the many influences on the reaction to transit radio, in this case streetcar riders versus bus riders. This latter point had not appeared as a possibility thus far.

Random selection on the vehicles was planned and executed to the best of our ability. Every fourth person was interviewed on a vehicle. It was not always possible to interview every fourth person because crowded conditions sometimes made aisle interviewing necessary and passengers sometimes left the vehicle just prior to the instance of being interviewed, or passengers boarded and had not ridden four or five blocks to qualify for interview.

But this systematic random selection of every fourth or fifth rider was maintained and the homogeneity of the sample is reflected in the result found from study to study.

Q. Does your testimony mean that the sample you used in making the survey by the Doody Company was representative of the attitude of the public riding radio-equipped vehicles in Washington? A. Yes, sir.

254 Q. In our opinion, if a survey were made of all the transit riders on radio-equipped vehicles, would the results be the same as those obtained in your survey?

A. It definitely would.

Q. In your opinion, can this Commission rely on this survey as an accurate representation of transit rider opinion? A. Yes, sir.

268 **Edward G. Doody** was called as a witness and having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Awalt:

Q. Will you please give your full name and address for the record? A. Edward G. Doody, 911 Locust Street, St. Louis, Missouri.

Q. What is your business? A. I am the owner of Edward G. Doody & Company, a research company, marketing research company, specializing particularly in opinion research studies.

Q. How long have you been engaged in such business? A. Since 1941.

Q. Will you please tell us generally some of the research studies that your organization has conducted? A. Yes. We do continuous research for the Pepsodent Division of Lever Brothers Company. We have continuous panels throughout the country where we are doing product testing on their new products. We serve the St. Louis Post-Dispatch in connection with advertising and readership surveys and have even made some circulation checks for them.

Speaking of St. Louis, we also work for the St. Louis Star-Times and the St. Louis Globe-Democrat. In fact, we do work for all three of the newspapers there.

In the transportation field we have made a number of studies for companies throughout the country, including the St. Louis public service company, Indianapolis Railways, Kansas City Public Service Company, and Detroit Street Railways, among others. Brown-Forman, a
270 Louisville distiller, has used our services in finding

out better markets for their products and also doing some product testing.

In the department store field our clients include such firms as the May Company in Cleveland and St. Louis, J. L. Hudson in Detroit, L. S. Ayres in Indianapolis and the Kaufman Company in Pittsburgh.

We also work in the food field with such super markets as Weingarten's in Houston and Betindorf's in St. Louis. The Grapette Company in the Beverage field located in Camden, Arkansas is another of our clients and we are currently doing a study for them.

I guess I might wind up by saying that we work for maybe 50 or 60 advertising agencies including such firms as Young and Rubicam and Henri, Ruthrauff and Ryan, Foote Cone and Belding, McCann-Erickson, Hurst and McDonald, Inc., and others.

Q. Have you made any studies in the radio field? A. Yes, we do studies for radio stations, certainly from the eastcoast through to the Rockies, of a coincidental nature like the Hooper Studies where we call people and say, "This is a radio survey. Is your radio on now?" We have also done in this connection a diary study, such as the Columbia Broadcasting Company, as a matter of fact, they are our clients. In other words, a diary study is where a diary is left in a home by a radio and they keep track of what they listen to for a week.

Q. Did you conduct a public opinion study or survey in Washington, D. C. with respect to radio reception in busses and streetcars in April 1949? A. Yes.

Q. Will you please explain the procedure you used in making the April 1949 survey? A. Well, the purpose of this study was to determine the reaction of Capital Transit customers to continuing radio programs while riding in radio equipped vehicles. Answers to the problems were approached in two separate directions. First of all, on the bus interviews to study passenger reactions within the medium itself and then interviews at bus stops to determine

rider knowledge and attitudes outside the influence of the medium.

I would like to point out here that these bus stop interviews were made before they boarded the vehicles, not after they alighted the vehicles.

The on-the-bus interviews, persons there had an opportunity to listen to the music as you ride and can judge the immediate impact of it at that time most perfectly and give it to us. This is distinct from possible attitudes outside of the medium. Each approach can apply a different question, such as, "would you like such programs to become a part of regular service?" Opportunities for public expression on the busses had to be offered because one, consumer acceptance is of primary importance and, two, listening reaction to broadcasts themselves will determine the financial success of a medium.

Interviewing of passengers was conducted on four lines on which five radio-equipped busses each were assigned. The vehicles had been in operation for a sufficient period of time to permit considerable familiarity of the riders with FM radio.

Of course it was anticipated that there would be a number of riders who would be taking their first rides on the radio-equipped bus at the time of the interview. Nevertheless, the primary objective to study the reaction within the medium was accomplished.

Trained investigators boarded busses during the hours of 7 a. m. to 7 p. m., daily, Monday through Friday and from 7 a. m. to 3 p. m. Saturday during the week of April 1 to 7, 1949.

Interviews were made according to peak and low passenger loads during the broadcast day. Persons interviewed were selected at complete random after they had ridden at least four or five blocks.

The four lines selected for the bus operations and the survey were the A Lines, Congress Heights; D-2, 4, Glover Park-Trinidad line; the L-4, Connecticut Avenue

273 line; and S Lines, 16th Street. It was believed that they would cover about every economic strata and represent a cross-section of the riders at least as best under the present system of routes.

Based on Capital Transit passenger figures, Lines A, D and S are about the same in respect to daily loads. However, Line L is about 127 per cent of any of the three lines. Thus, Line L was allocated 29.7 per cent of the planned 2,500 quota of interviews, the others being 23.4 per cent of each.

Q. When you speak of 23.4 that is a percentage figure?

A. Yes, and that is 29.7.

Q. 29.7. A. Yes, those are percentage figures. So that we would apportion our figures according to the peak loads. As for the bus stop interviews, again the purpose was to obtain the attitudes and reactions of the riding public to transit radio outside the medium, the best expedient under the existing time table of events, and which was utilized, was the interviewing of persons at bus stops along the bus routes where the radio busses were in operation. In this manner, customers who had experienced music as you ride, as well as those who had not could be interrogated.

The bus stops offered the best source of potential transit riders.

274 How people react within a particular atmosphere might be different outside the same environment. So, assuming this possibility, the decision to interview Transit Company customers away from the radio-equipped busses was a step in that direction.

Personal contacts again were made at complete random as persons waited for transit connections. Field operations were conducted during the same week that on-the-bus interviews were made. The L Line, again received the largest quota as opposed to the other three. A total of 2,320 contacts were made; that is, total interviews.

Mr. Harrison: That is on the L Line?

The Witness: No, sir; that is all together. That line L, it would be 29.7.

There were 29 bus stops covered on the four routes during the broadcast day. In other words, those were our interviewing points, the 29 various stops. These stops were selected by the Capital Transit Company's traffic Department because they are centrally located and were representative and about a good a place as any on the respective lines to get a broad cross-section of riders.

By Mr. Awalt:

Q. What was the result shown by this survey? A. The results shown in this survey were that 94.1 per cent were not opposed. We asked the specific question of 275 them, "would you like such programs to become a part of regular service?" Of this percentage 79.6 were definitely in favor, 14.5 were either indifferent or did not know, and 5.9 were not in favor.

The Witness: This 5.9 that were not in favor we asked them specifically after we had their reasons why not, "Well, even though you don't care for such programs personally, would you object if the majority of passengers wanted busses and streetcars equipped with radio receivers?" When asked that question 4.7 said that they would not object or, in other words, would not oppose the majority will. This leaves a balance of 1.2 firmly opposed.

In answer to the specific question, "Would you say that these programs make your ride seem more enjoyable, less enjoyable, or neither?" I would like to say that our investigators were instructed and it says so right on the questionnaire to rotate the "more" and "less" enjoyable. 79.9 answered yes, that it made their ride seem more enjoyable, 5.4 that was less enjoyable and 14.7 said neither.

276 By Mr. Awalt:

Q. Were you requested to make a supplemental survey and study of public reaction to the music as you ride pro-

grams on Capital Transit busses and streetcars? A. Yes.

Q. Did you make that survey? A. Yes.

Q. When did it start? A. You are referring to attitudes of Capital Transit customers, study No. 2?

Q. Yes. A. That survey was made between October 11 to October 17.

277 Q. Will you please explain the procedure used and results shown by this survey as set forth in the report? A. In order that the results of both the April and October studies would be comparable, the same sampling procedure was followed for bus interviews.

The sample distribution in Study No. 2 was broadened to include interviews on streetcars which were equipped with radio receivers since our first survey in April. You see, when we made the study back in April there weren't any radio receivers on streetcars.

The same questions relating to rider reaction were asked in both surveys. Study No. 1 included interviews with passengers at bus stops, however, in view of the results found in our previous studies of rider reaction toward transit radio, not only in Washington, but in St. Louis, we concluded that Study No. 2 could be confined to interviews aboard radio-equipped vehicles.

By Mr. Awalt:

Q. Mr. Doody, what was the result shown by the survey, by Study No. 2? A. Again quoting that same question.

Q. What same question? A. "Would you like such programs to become a part of regular service?" 93.4
278 per cent were not opposed; that is, 76.3 were in favor, 13.9 said they didn't care and 9.2 said they didn't know.

I would like to explain here that the figure in the April survey is a combination of "don't care" and "don't know." In this particular survey we were able to break down "don't knows" and "don't cares" as I have given them here.

Mr. Pollak: Which figure in the April survey is that combination?

The Witness: 14.5.

Mr. Pollak: What?

The Witness: Said either they didn't know or didn't care. Here we were able to separate them, "don't care," 13.9; "don't know," 3.2.

6.6 were not in favor but when asked the question, "Well, even though you don't care for such programs personally, would you object if the majority of passengers wanted busses and streetcars equipped with radio receivers?" 3.6 said they would not object or oppose the majority will. This leaves a balance of 2 per cent firmly opposed.

282 Q. Now Mr. Doody, before you made the survey which you commenced in October 11, did you attend a conference with Commissioner Lauderdale and members of the staff of the Commission? A. Yes.

Q. What was the purpose of this conference? A. I have been informed that the Commission was desirous of knowing how the survey was to be conducted; that they wanted to be sure it was an impartial survey and that they might want to have us cover specific information.

Therefore, the purpose of this conference was to acquaint the Commissioners and the staff of the Commission with the survey which we intended to make and to find out from them if there was any particular phase of the general question that they wanted covered for the Commission's information.

Q. As a result of this conference, did you alter your plans in any way with respect to making a survey? A. Yes. The Commissioner and the staff emphasized that they were particularly interested in the effect of music as you ride on the operators driving such equipped vehicles with particular emphasis on the safety factor. As a result of this conference I added to the survey a check of operators of four divisions of the company having the greatest number

283 of vehicles equipped with radio receiving sets. These divisions are known as the Northern, Southern, Brightwood, and Western.

Q. What procedure was used in making the survey? A. We prepared a set of nine questions to be asked of the operators at each of the four divisions I mentioned.

Q. What did you do next? A. I arranged for either myself or the staff to meet at the Superintendent's office at each division and interview the operators as they came off their various runs. The first interviews were made at the Western Division on October 12th, and these interviews were conducted by me personally. Like interviews were conducted at the other divisions, for instance, the 284 Northern Division was covered on October 13, and 14, and the Southern and Brightwood Divisions were covered and the operators interviewed on October 13.

Q. In conducting these interviews did you or your staff make any effort to pick out particular men for such interviews? A. Not at all. Operators were selected at complete random as they entered the Division office to turn in. Any operator who had operated a vehicle equipped with radio receivers was considered eligible; that was the only requirement.

Q. Did you ask the name or number of any operator? A. We did not.

Q. Why did you not? A. We wanted the men to feel, to have every assurance, that these interviews would not be turned in or in otherwise be a subtle attempt to get data which might later be used against them.

Mr. Harrison: May I ask there, you mentioned the superintendent's office. Was the superintendent of the company present at the interviews?

The Witness: On three of the four, no. He brought the men in and left. I might add that in view of that we tabulated that garage or division separately to see if it had made any difference and it had not.

285

By Mr. Awalt:

Q. In other words, you ran a second, practically?

A. We tabulated these results by divisions and on the few interviews that the Division Superintendent was there I made a note. It happened to be when I was doing the interviewing myself. I would like to say that his presence was an impersonal presence, he was wandering in and out and it was an impersonal presence.

We were careful to note and see if it did.

Q. How many operators were interviewed at the four divisions that you specifically mentioned? A. At Western, 65 operators out of 250; Southern Division, 57 operators out of 178; the Brightwood Division, 43 operators out of 101; and the Northern Division, 129 operators out of 378, or a total of 294 operators. This represents a 16.4 per cent sampling of the 1,796 capital transit operators who have operated a radio-equipped vehicle.

Q. In your opinion, does the percent of operators interviewed at these divisions fairly measure the ratio of all operators' opinions? A. Yes.

Q. What was the result shown by this survey? A. 95.9 per cent of the operators answered that there was no interference with the proper and safe operation. That was in direct answer to the question, "Do you think that the radio interferes in anyway with the proper and safe operation of your vehicle?" 95.9 of the operators answered no.

Mr. Harrison: These conclusions which you gave stated on page 7 of Exhibit No. 5?

The Witness: They are stated in there, I am not sure of the page. Yes, it is the last page.

Two per cent were qualified in their answers and two per cent felt that safety was impaired. 88.1 had no personal objections to operating radio equipped vehicles when asked the question, "Do you personally have any objection to operating a radio-equipped vehicle?" Only 3.4 said they had objections and 8.5 voiced reservations.

On the question of, "Do you think radios make your job more pleasant?" 74.5 felt it made their job more pleasant with the radio; 8.5 said sometime and 41.1 said they didn't know. 1.7 said "No difference," and 13 said radios did not make the job more pleasant.

I would like to add here that one of the things, sort of an occupational hazard in the research business is what we call getting a cheap yes.

To avoid that on this question we asked them in what way or how. In other words, if they were unable to substantiate their yes, it wouldn't have been counted.

By Mr. Awalt:

287 Q. In number of operators, how many is 4 per cent? A. 12 operators, sir.

Q. When you say that two per cent or six operators were involved, their answers as to proper and safe, what do you mean? A. They said if the volume became too loud there was a potential threat.

Q. What were the reasons given by the two per cent or six operators who felt safety was impaired? A. Two out of the six thought that normal volume on the radios interfered, four of the six thought that if and when the volume became too loud, that is, above normal, safety of operation was threatened.

Q. Then these two operators who felt that even under normal operations, the radio was possibly a hazard, what percentage is that of the drivers in the whole survey? A. That is less than one per cent.

Q. Well, as a matter of fact, according to my figures it is just a little more than one-half of one per cent, isn't it? A. That is right, sir, .6.

Q. What did the driver say in response to the question, "Generally speaking, do you think that radios make your job more pleasant?" A. The biggest majority said
288 they liked music, that was 23.4 that said they liked music. The next highest was 12.7 who said, "Music makes the passengers more pleasant," and 12.3 said that

the music was soothing and relaxing to them. 11.5 mentioned time breaks, scores and news. 11.1 said it made the vehicle quieter and accordingly they didn't hear passengers talking. 4.5 said it makes their work less monotonous, 8.2 said it makes the time pass quicker, 7 per cent said they expressly enjoy it when they are laying over at the end of the run, 3.3 said they like the music but claimed they would like a little more variety in program, 2.5 said the music was good but the announcements sometimes got on their nerves.

Then we have miscellaneous reasons down here, "News helps me keep up with things," 1.2 and so forth.

By Mr. Awalt: "

Q. Mr. Doody, on page 6 of Exhibit No. 5 at the bottom I see a reference to the Shriner's Parade and the reference reads: "Over a third (36.1 per cent) of the 294 operators were on duty during the Shriner's Parade. These 106 drivers were asked, 'Do you think the rerouting announcements were helpful to the public in avoiding confusion?' two-thirds (65.1 per cent) answered in the affirmative."

What was the purpose of that? What was the Shriner's Parade and announcements? A. The purpose of the

289 question was that there had been a lot of talk as to how helpful the transit radio could be in an emergency for routing people around. Here was a chance right at the time of the survey where during the parade WWDC made announcements, while not on specific lines, their announcements were something to the effect that bus lines on streets would be detoured to certain other avenues. They gave a complete route of the parade and mentioned how the specific lines would be affected.

So, we asked the operators if they were helpful in any way. The Yes votes said, 65.1 and although we didn't ask them how, I would say a good third of the operators volunteered comments, like "We are not asked so many questions. There is less confusion."

Cross-Examination

By Mr. Harrison:

291 Q. I want to ask you one further question about this survey. Did you do any personal observation yourself on the streetcars or busses as to what you thought might be the effect of the broadcasts either on the operators or the riders? A. Yes, I was here during the entire week of the survey, here instructing our investigators, going out with them. In fact, everybody, regardless of the amount of their experience, were required to go out and get ten interviews and bring them back before we gave them any quotas to see if they were handling it properly.

In introducing some of our personnel into this work it was part of my work to ride the vehicles.

Q. Did you notice any sounds from the radio that would overcome the street signals, automobile horns, policemen's whistles? A. No, I did not, sir.

Q. Did you observe that it was so loud that it interfered with conversation between passengers? A. No, sir, and I might further add that it didn't interfere with our questioning of passengers.

Q. You did make some surveys on the vehicles themselves? A. Yes.

Q. Did the persons being interviewed find any
292 difficulty in hearing your questions or did you find any difficulty in hearing their answers? A. No, sir.

Q. Did you have to speak in such a loud tone that you would annoy people sitting in the seat behind or in front of the one being interviewed? A. No, sir.

* * * * *

315 Donald O'Neill was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dowd:

Q. Would you state your name and address for the
316 record, please? A. Donald O'Neill, 62 Greenwood
Road, Montclair, New Jersey.

* Q. What is your occupation, Mr. O'Neill? A. I am program director of the Franchise Division of Muzak Corporation.

Q. How long have you been associated with Muzak? A. Thirteen years, since its inception in New York in 1936.

Q. What are your duties with Muzak at the present time?
A. As program director I have supervision over and direct responsibility for all of the musical programs distributed by Muzak throughout the country. This responsibility involves the selection and grouping of music for programs to hotels, restaurants, banks and other offices, to factories and other industrial accounts; for our programs to radio stations for transit broadcasts. It involves programs furnished to a number of railroad and steamship companies.

My duties also include the compilation of music libraries used in transit broadcasting and for individual industrial, office and restaurant subscribers beyond the reach of our wire services as well as the additions of new music to these libraries each month.

As a member of our music committee, I participate in the determination of the music and the type of orchestra
317 to be used each month for recording new additions to our libraries.

Q. Just what is the principal business of Muzak? A. Muzak Corporation consists of three major divisions. First is the transcription division which is engaged in the recording and manufacture of transcriptions and phonograph records for ourselves and for others; second, there is an Associated Program Service Division which maintains a library of transcription music released to standard radio stations here and abroad; third, there is the Franchise Division which is engaged in the musical programs by wire in

some 70 cities in the United States and its possessions, Canada and Mexico. This division also deals with the various programs and libraries listed in reply to the question under duties and responsibilities.

Q. You referred to a radio broadcast library. Is the Transit Radio library your regular radio broadcast station library? A. No sir, it is not. It is different from the library the Associated Program Division supplies to standard broadcast stations.

Q. How and why and what is the library that you furnish for Transit Radio broadcast? A. The library which we furnish to Transit broadcast stations is made up of the music drawn from our functional library. It is music that is designed for use in work or other types of installations. It differs from standard radio music in being considerably less highly arranged and being more simple than the type of music which is customarily heard on standard radio stations.

Q. What were the primary considerations in the creation of this Transit Radio library? A. As the oldest and perhaps the largest source of functional music in the country, it has been natural for us to follow the development of transit broadcasting with a considerable degree of interest. From our analysis of music used in this business we believe the type of functional music in which we have specialized is ideal for this purpose. We design our library to include non-distracting music so that all musical tastes are represented in amounts roughly proportional to the anticipated likes and dislikes of the projected audience.

Q. What are the chief characteristics of the musical selections that are placed in the Transit Radio library? A. First and most important, whether the selection is concert, semi-classical or popular, the melody is emphasized throughout. All of the concert and semi-classical music is performed by orchestras usually called the "Salon" type, made up of approximately 15 to 20 musicians. Violins and other stringed instruments predominate in these combinations over woodwinds and brass. The popular music

319 is performed by popular dance type combinations of wood winds and brasses tempered in many instances by the addition of a string section. All the arrangements are generally full with no solo performances; swing and jazz are avoided as well as heavy symphonic music. Brass instruments are muted. Extreme changes of dynamic level have been excluded. Throughout simplicity of treatment has been the keynote with enough tonal coloring to keep the music from becoming drab and uninteresting.

Q. Mr. O'Neill, were you present during the testimony yesterday? A. Yes, sir.

Q. You heard some of the references to the music used by WWDC-FM? A. Yes.

Q. Some of those terms, which I will repeat, were brassy, jive, bebop, boogie woogie. In any of the music included in the Transit Radio library selections of that type? A. In the library there are some selections that might be termed jazzy. These, however, happen to be on particular discs and are not used for program purposes. Otherwise, there is definitely no bebop, there is no jazz.

Q. Could any of the music be called brassy? A. No, sir.

320 Q. As I understand your previous testimony, the brasses are muted for the most part? A. That is right. In other words, brass as an instrument is not emphasized at any point. Usually they have either mutes in them or they are kept so much subdued and in the background that frequently they are not perceptible.

Q. You have no instances, for example, where Henry Armstrong would take off on a trumpet solo? A. No, sir. Those are characteristics which do not fit in with our concept of functional music.

Q. What steps, if any, do you take to make certain that your quality in this library will be maintained? A. We select all our own arrangers and artists to score and perform in the manner we want. We record them in our own studio, using the best equipment available and in so far as

the program is concerned, we maintain a very highly trained staff of personnel.

Q. Incidentally, what type of recordings are these? A. These are electrical transcriptions recorded vertically as against a lateral recording which is characteristic of phonograph records.

Q. What is the fidelity of your vertical recordings? A. Not being an engineer, I can not give too much of a definite answer on that. It ranges, as I understand, from approximately three or four hundred cycles to at least 10,000.
321 It exceeds by all means in the upper end and lower end the mechanical means of reproducing that music.

Q. Does the average person have musical likes and dislikes? A. Definitely. This has been shown conclusively by our own research studies and by the investigations of many investigators. It may be stated that the average person has strong likes and dislikes in music. Furthermore, he will accept as a matter of course the music he likes but will protest vigorously that which is personally distasteful. It has been our experience that a favorable comment freely offered is a rarity compared to the number of unfavorable comments. Every indication we have reveals better than 95 per cent acceptance of music on the part of our audience.

Q. Do I understand from that that in your experience people who object to something are more apt to protest than those who like it? A. Yes, people who dislike music are much more prone to object verbally or in writing than those who do not object or who like the music.

Q. As a part of your research work, has Muzak Corporation developed a statistical method for evaluating likes and dislikes? A. Yes. Every study we have made includes

likes and dislikes. Those are both carefully tabulated
322 and listed. They enter into the planning of all our programs. For purposes of statistical measurement we have developed a merit index to express in one figure the likes and dislikes of our audience. Types of music that have a low merit index rating are excluded.

Q. It is on the basis of this statistical analysis that you indicated previously that 95 per cent of the audience found your musical libraries acceptable? A. I would say that is true.

Chairman Flanagan: May I ask a question on that point on the likes and dislikes?

Mr. Dowd: Yes.

Chairman Flanagan: I wonder if this witness would have any explanation for the fact that a large number of people who profess to be music lovers violently object to music of this type on the ground that it violates their private rights.

Mr. Dowd: If the witness has an opinion, I shall be glad to have him express it.

The Witness: Well, I can't answer from a legal standpoint. I will say this, that the reaction of most people to music is based on association. Generally speaking, people with a high musical training do not care too much for the more popular forms of music. By popular I mean dance music, operetta music, types of music of that sort.

323 That of course is strictly an objection that stems from their background, from their association with other types of music.

Chairman Flanagan: Do you have an extensive musical background yourself?

The Witness: I have, of course, studied musical theory since I have been with Muzak. I have studied piano. I have dabbled in many phases of the business. I do not claim, however, to be a professional musician.

By Mr. Dowd:

Q. You stated, did you not, that your library used for Transit broadcasting did not contain symphonic music? A. That is right.

Q. With reference to your answer to the Chairman, do I understand then that perhaps people with a high degree of musical training, a higher percentage of those people would like symphonic music than would the average listeners? A. That is right.

Q. Your library does not include symphonic music? A. No, sir.

Q. So those people who like it might not like the type of music in this library? A. That is right. In relation to the business of likes and dislikes as it affects Washington, I might say—and this has nothing particularly to do with symphonic music as such but the program in general—that in the actual operation of Transit broadcasting Mr. Strouse and his staff have bent over backwards to keep the music and the program both pleasing and soothing. We furnish WWDC-FM with the same program that is now being used in several other cities. At the express wish of Mr. Strouse, we are indicating those selections in his program which by any stretch of the imagination can be deemed too loud, too jazzy or too brassy for the specific requirements of the Washington audience. It is our understanding that these selections are being eliminated from the program actually broadcast here.

Q. Where music is introduced as a new element in a surrounding, whether it is industrial, office or factory, how long does it generally take before it is accepted by the people in those surroundings as a part of the normal condition? A. It takes a period of approximately four to eight weeks before the music becomes part of their working conditions. In other business, that is in our functional programs in factories and other things, before we make surveys we prefer to wait approximately three months.

Q. Have you made any survey or have you any figures to show an increasing acceptance of musical background among factories, offices, restaurants and other types of installations? A. I have some figures here on the music or the acceptance of music in offices as well as in factories.

Q. Would you give those figures, please? A. In response to the question "Do you like music while you work?" we received the following percentage of favorable responses in the past four years: In 1945, 77.3; in 1946, 93.2; in 1947, 94.5; and in 1948, 95.5.

Q. That is the percentage in offices where you had a musical background installation? A. That is right.

Q. How about your industrial plants? A. From industrial plants the same question produced these figures, favorable ideas: In 1945, 80.8 per cent; in 1946, 89.2 per cent; in 1947, 93.6 per cent; and in 1948, 94.9 per cent.

Q. Do these figures indicate that the longer the music is there the greater number of people accept it and appreciate it and want it while they work? A. I would say those figures tend to support that statement.

Q. Now in your installations where you have made these studies do you have or have you ever had a 100 per cent acceptance by the people in question? A. To the best of my knowledge, this has never happened. There is always a small minority of from 2 to 4 per cent who object to the

326 use of music in industry and a number in proportion who are indifferent. So far as we know, there is no means of overcoming this small opposition. However, we derive considerable satisfaction from the fact that the overwhelming majority of our audience is highly favorable to our music and also from the knowledge that whether they want it or not, the small minority who object derive subconsciously the benefits of our functional music.

Q. Have you made statistical studies upon which you have based that conclusion? A. Yes sir, we have studies, as I stated, ranging back to early 1945. This is a continuing part of our operation.

Q. Do those studies then indicate that from the objective analysis such as efficiency or the release of fatigue or tension, that more people benefit than like the music? A. That is true. There is a general increase in the efficiency from objective studies. I think the average is approximately 12 per cent. There have been cases where it runs as high as 45 per cent.

Q. So that the benefits of the music are not always necessarily the same as the subjective likes and dislikes? A. That is true.

361 Ben Strouse was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dowd:

Q. Will you please state your name for the record? A. Ben Strouse.

Q. What is your occupation, Mr. Strouse? A. Vice-president and general manager of Capital Broadcasting Company, 1000 Connecticut Avenue, and I am president of Washington Transit Radio, Inc.

Q. Do you know, as president and director of Washington Transit Radio, whether any of the stockholders of Washington Transit Radio are officers or employees of Capital Transit Company? A. They are not.

Q. What is the relation between Washington Transit Radio and Capital Transit Company with respect to the installation of radio receiving equipment? A. Washington Transit Radio, Inc. has a contract with Capital Transit Company for the installation and maintenance of FM receivers in street cars and buses of Capital Transit Company and also has a contract with a radio station which in turn enables them to provide for a satisfactory program service for reception in such vehicles.

Q. What station is now giving such service? A. WWDC-FM.

Q. Is there any contractual restriction which would make it necessary that WWDC-FM furnish these programs? A. No, there is not. Arrangements could be made with any other radio station.

Q. To furnish similar type programs? A. To furnish similar type programs, yes sir.

Q. What was the primary motive of Washington Transit Radio with respect to entering into this contract with Capital Transit Company? A. Primarily it was a commercial venture from which we hope to gain a profit.

Q. If your primary motive was commercial venture, why were you interested in determining whether the public in general desired or wished to accept this type of service?

A. I don't believe any commercial venture has a chance of success unless it has public backing or public acceptance. Certainly no advertising medium does.

Q. Did you try to control or influence the surveys that were made on behalf of Capital Transit Company and Washington Transit Radio? A. Not at all. The original survey which Mr. Giddings referred to was sort of an informal thing made by George Washington University students on which we got 92 per cent acceptance. That was made way back with one experimental bus and one experimental street car. The Dobby survey was made in April. At that time we were particularly anxious to find out whether we had public acceptance. At that time
364 we had 20-odd installations. If the public did not like Transit Radio and did not want it, that was the time for us to get out of the business. We were particularly anxious to know the real truth then and as a result we not only made no attempt to influence Mr. Doody—not that we could, but we were hoping he would lean over backwards to be perfectly fair in his survey. We wanted to find out, it was our advantage to know.

385 Q. Mr. Strouse, you testified that the primary motive of Washington Transit Radio in entering this enterprise was that it was a commercial enterprise. There has also been testimony on behalf of Transit Radio, Inc., and Washington Transit Radio, Inc. as to the other cities in which installations have been permitted. Could you seek to inform yourself as to whether there were any cities in which installation had been refused by the competent municipal authorities? A. Mr. Pollak, I am a member of the Board of Directors of the National Company of which Mr. Taft who was a witness the other day is Chairman. I don't know all of the affairs of that company only those that come

up at the directors' meetings. I do not know, however, of any case where municipal authorities or anyone else has refused transit radio.

I think Detroit the issue is still up in the air, but I don't think it was actually turned down. But I don't know that for certain, sir.

Cross-Examination

By Mr. Pollak:

397. Mention has been made of the factor of safety, Mr. Strouse, particularly with reference to the public advantage in their being a means whereby direct communication can be made from Capital Transit Company to the drivers of its vehicles.

Perhaps you are not the witness to whom I should put this question but my question is, for that purpose, would it not be possible to make installations which are very much cheaper than the present installations? A. I would like to answer you, Mr. Pollak, by describing a visit I made to the Pentagon Building to talk with the Liaison Committee on Civil Defense. I talked to Colonel Beers, who is chairman of that committee and Colonel Stanford, who is communications officer. They were very much interested in transit radio, interested in all types of mobile radio, one-way and two-way. They asked me for a complete list of cities where transit radio operated.

398. They told me of use for which transit radio could be used in emergency which we had never realized ourselves, sir. Some of those uses are services that can be used in broadcast servicing.

For example, Colonel Stanford brought out that news casts during times of extreme emergency could be used to control panics and for "Panic-control," which is the phase he used. There are also many other uses.

Drivers could be asked to deposit citizens at certain parts of the city for ambulance duty. The drivers and the public

could be informed to leave certain areas of the city. In all, they gave me 7 possible emergency uses that as I say, we had never realized ourselves.

399 **Frank F. McIntosh** was called as a witness and having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Dowd:

Q. Will you state your full name for the record, please?

A. Frank F. McIntosh, Consulting Engineer, with offices at 710 - 14th Street, Northwest, Washington, D. C.

Q. When you say you are a consulting engineer, what type of consulting engineer is that? A. I handle matters of acoustics in connection with radio and television.

Q. Mr. McIntosh, what is your educational background?

A. I am a graduate of Electrical Engineering of the University of Nebraska. I have a Masters Degree from M. I. T. in Cambridge.

400 Q. How long have you been engaged in acoustical radio and electronic engineering matters? A. I have been associated as a member of the technical staff of the Bell Telephone Laboratories for eight years at which time I was in the developmental group, research group, and the installation groups. The work I engaged in there was the electronic design, acoustic material design for studios, acoustic measurements, installation of radio and television stations, aircraft stations and the like.

Q. Were you ever employed in the government? A. I was employed during the war as Director of the Radio and Radar Division, Foreign and Domestic Branch, which handled, of course as you know, all the electronics for the Army, Navy and civilian uses. That period lasted until 1944 when I left to form my own business. Between the time I worked for Bell Laboratories and the time I went to the War Production Board, I was the sales engineer for the 12

Western States of Gray Bar, Western Electric equipment and then for a year and a half—that lasted four years—a year and a half after that, or for a year and a half after that, I was the director of station operations of the Fort Industries Company, which headquarters at Toledo, Ohio and handled matters of six broadcasting stations.

I am a part-owner of the Muzak franchise setup in Cincinnati, Ohio where we dispense music to industries, 401 restaurants, hotels and the like.

I operate, besides the consulting business, in Silver Spring, I have a laboratory where research and development work is done and also where we manufacture on a relatively small scale a number of electronic products.

Q. Have you appeared as an expert witness on matters of this sort in the past? A. I have appeared in every form of engineering work in connection with studio and television design, yes, sir.

Mr. Dowd: Mr. Chairman, I offer Mr. McIntosh as an expert witness and wish to request that his qualifications be conceded.

Mr. Pollak: No objections.

Chairman Flanagan: Very well.

By Mr. Dowd:

Q. Mr. McIntosh, do you have any connection with Capital Transit Company or Transit Radio? A. My only connection is that I was asked to make some measurements on some of their vehicles. I have no other connection.

Q. Is it possible to measure the noise level at any given point or in any given situation? A. Yes, sir; it is.

Q. For instance, in this room, could you measure the noise level in this room? A. Yes, sir; it can be 402 done.

Q. How would such measurement be made? A. Such measurements are made with calibrated pressure measuring equipment. There are several companies that make this, among them being General Radio, Sound Appa-

ratus Incorporated, General Electric, and Homer H. Scott now have that.

Q. Did you make such a measurement pursuant to your employment by Washington Transit Radio? A. Yes, I did.

Mr. Dowd: Mr. Chairman, I request that the Exhibit entitled, "Report" be marked for identification as Exhibit No. 13.

Chairman Flanagan: It may be so marked.

(Document above referred to, Exhibit No. 13, was marked for identification.)

By Mr. Dowd A

Q. Mr. McIntosh, I call your attention to what has been marked for identification as Exhibit No. 13. Will you please state what that exhibit purports to show? A. This is a summation of the measurements that were made in a number of streetcars and busses to indicate the absolute sound levels that could be obtained there during various parts of the day and on different vehicles. The exhibit is somewhat self-explanatory, we believe.

403 Just to clarify, the first column shows the car or bus number that was measured. The next column shows the position in the car in which the measurements were made, the front being up near the driver and the middle being about in the center of the car and the rear being about, of course, within six feet of the rear.

The next double column is headed "Car in Motion," and the first of this double column is "Car noises with radio on." The second column was without the radio on. These measurements were made in the accepted and well-known terms of decibels and db stands for decibels. db is roughly speaking about the smallest increment of increase or decrease in audio level that your ear can obtain or understand or recognize. The ear does not hear arithmetically, that is, twice the pressure on the ear does not give you twice the sensation of the sound. Your ear is logarithmic in its hearing and there have been a world of measurements made

to establish the general characteristics of the ear and they have been published throughout the literature of the country.

Dr. Fletcher of Bell Laboratories is one of the leaders who have published books on speech and hearing and those associated with him have contributed to that information.

Q. May I interrupt there? When you say that the ear does not hear logarithmically, what would be the situation if you had a given volume of sound, for instance, 404 a piano and you were to double the number of pianos, what increase in the sound level would there be as measured in decibels? A. If you assume a double sound energy level, you would have a three db increase in db.

Mr. Pollak: A what?

The Witness: If the power level was doubled the db increase would be three db.

By Mr. Dowd:

Q. In other words, if you had a sound level of 50 decibels, you would have to add another sound of 50 decibels in volume in order to increase the total volume to 50 decibels? A. You would have to have the same wattage component as the original sound to increase the db.

Mr. Pollak: Would you repeat that, please?

The Witness: In order that the sound level was increased 3 db, the power in the sound would have to be doubled. In other words, going from 50 db to 53 db, requires that twice the energy or twice the power is contributed to the sound waves. That is a very fortunate thing. If it was not for that, we would all be going crazy everytime somebody tooted their horn or hit a bell or slapped a book down on the table. Those peak energies may be many, many times greater for a very short instance.

405 By Mr. Dowd:

Q. When I interrupted, Mr. McIntosh, you had explained that the first two columns represented the noise

level with the car in motion. Now the third column represents the noise level with the car standing still with the radio on? A. The third column is the car in motion with the car noise and with the radio on.

Q. I mean the last column to the right. A. The last column to the right is the streetcar standing still and the radio going.

Q. I notice that in the first two columns there is very little difference between the noise level at any given position in the vehicle except for 5239. Was 5239 a bus? A. 5239 is a bus.

Q. Then 1511, 1558 and 1127 were streetcars? A. Yes.

Q. In those vehicles the noise level when the car was in motion was the same measured in decibels in all positions?

A. Yes, sir; pretty much, sir.

Q. In the bus, when the bus was in motion the rear of the bus was much noiser than the front and middle of the bus?

A. That was due to the fact that the motors are located at the rear of the bus and the average intensity measured higher there.

Q. In the last column to the right I notice that in each case the noise level as measured in decibels is less at the front of the car than in the middle and rear of the car. A. Well, in all cases that we checked we found that the actual noise level was slightly less right behind the driver than in the other positions of the car.

Q. In those cases the radio was on? A. Whether the radio was on or not; it seemed slightly less there.

Q. But when the car was in motion the sound level throughout the car was the same, measured in decibels, and I also notice that that is true whether the radio was on or not? A. Yes, because the actual energy contributed by the radio was so small that it was not possible on an averaging meter to measure the difference. It is just that small. The reason you can hear these things is not necessarily a matter of straight energy. It is a matter of where your mind works. You can differentiate between sounds or you get used to a sound and put it out of your mind.

For example, like the rumble of a streetcar going out-
side your house. Some people cannot sleep the first
407 night visiting someone where streetcars go by but
after a while your mental processes are such that you
exclude those sounds so that they don't disturb you exces-
sively.

In listening to things you hear the things you want to
hear. Everybody has experienced the business of people
talking to them and having them turn right around and ask
you what you said. Any new sound you have you are going
to hear for a while.

Q. Upon the basis of measurements that you made and
your experience in this field, would you say that the radio
when the car is in motion, with the radio in operation, that
the radio in any way prevents anyone from hearing any-
thing that he would otherwise hear; that is, if the radio
were off? A. No, sir; I don't believe that it is possible to
provide enough energy through a radio sound system that
you could economically put in a car to mask out other
sounds.

Q. Assuming that the car noise without the radio is 54
decibels, what power would be needed, how loud would the
radio have to be, before you would override the car noise?

A. Well, the power increase, the sound energy increase,
assuming that the radio at the time of competition was giv-
ing the same amount of energy out as the noise, in other
words, there was a 3 db increase in the sound level as a

408 result of the radio which was not the case in these
measurements, but for the purpose of getting a base
from which to make a computation, we have to as-
sume something that might be logical. You would have
to increase the power 1000 times in order to completely
mask or do what a masking job of 30 db, which is consid-
ered a minimum ratio for masking.

Q. Do I understand from that then, that in order for one
sound to mask or override completely another sound, it
must be 30 decibels above the other? A. 30 db is the as-

sumed ratio for masking. In other words, the first sound then becomes a very minor one and the one to which you are listening is the controlling one.

Q. Now in view of the fact that the measured sounds or the measured volume of sound in decibels is the same whether the radio is on and without the radio on, how do you explain that you can hear the radio? A. As I said before, the ability of your mind to pick out what you want to listen to and differentiate against sounds, is one of the faculties that we are provided with.

Q. And if a new sound such as radio is introduced into your normal streetcar noises, would that sound become more noticeable than the noises to which the ear is accustomed? A. Yes, sir, any new sound attracts your attention until it too occupies that place in your head that all the

Q. Is it also correct to conclude from your exhibit 409 that the increase in the sound from an average of anywhere from 44 to 64 decibels, depending on which one you were measuring and when, that the increase between the rate of the noise level with the car standing still and the car in motion is due to some factor other than the radio? A. Yes, sir.

Mr. Dowd: That is all on direct.

Cross Examination

By Mr. Harrison:

Q. I want to ask Mr. McIntosh if the last column on Exhibit 13 represents the measurement of sounds of the car itself? A. The car was standing still during that measurement and the measurements show all the sound that was entered in the car, whether it was coming from the car or coming from noises outside the car.

Q. I take the bus, No. 5239, was the motor of the bus operating at that time? A. In an idling position.

Q. What about the streetcars? Were the motors of the cars operating at this time? A. Of course the motor is standing still and does not turn. You are probably referring to an air pump or something of that kind.

410 Q. I don't know what it is. A. Frankly, I don't recall whether the air pump was operating or not.

Q. The compressors, I am informed. A. The compressors.

Q. Could you measure that sound apart from the radio sound? A. The radio sound, frankly, this chart shows that the radio sound was so small that we couldn't measure it apart from the other sound. The amount of energy contributed by the radio was so small compared to the energy contributed by other noise sources that that was not possible. Whether or not the compressors could be measured separately from other street noises, I think that would depend on how close you were to the compressors.

Q. Are you able to state from Exhibit 13 what the measurement in decibels is of the radio itself when it was in operation? A. No, sir; that was not attempted. The other noises were so great that we couldn't measure the music.

Q. In other words, you could not separate that from other noises? A. No, sir.

Q. Are you able to state whether or not any of these measurements of sound are measurements of sound that came from outside the vehicle? For instance, traffic on the streets? A. Well, I would say a good part of this noise is traffic from the street, particularly when the car is standing still.

411 Q. Did you take any measurement on the street outside the vehicle? A. Yes, we did, as indicated in the two columns below. The noises indicated at 14th and F Streets on two days were 50 db one day and the next day 60 db.

Q. That is, the ordinary street noises? A. That is right.

443 **Ross H. Beville** was called as a witness and having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Dowd:

Q. Would you state your name for the record? A. Ross H. Beville.

Q. Will you state your connection with the Washington Transit Radio, please? A. I am a member of the Board of Directors, a stockholder and chief engineer of this Company as well as WWDC.

Q. What are your duties as chief engineer of the Washington Transit Radio? A. My responsibilities as chief engineer of the Washington Transit Radio include responsibility for developmental and experimental work which included the installation of the first two receivers here in Washington in March of 1948 at which time we were determining the requirements of such a system for installation in mobile equipment and of course the feasibility and public acceptance of such a system.

I also serve as a member of the Engineering Advisory Committee to the National company, Transit Radio, Inc., with headquarters at Cincinnati and my more direct responsibility at the moment is responsibility for the installation and maintenance of the receivers installed in Capital Transit Company vehicles here in Washington.

Q. What equipment is used in the bus and streetcar installations here in Washington? A. The major components of the equipment is an antenna, a receiver and six speakers with the associated wiring.

Q. Why are six speakers used? A. The choice of six speakers was not just a chance selection. That was the result of some of the experimental work that was done over a year ago. At one time we considered the use of one speaker and we gave up the idea of the single one due to the fact that always in a case of that kind the sound level at the point of origin is much higher than several feet away.

In order to get a uniform distribution of sound throughout the vehicle or through the latter two-thirds or three-

quarters of the vehicle we chose six speakers as equally well spaced as construction details of the vehicle would permit. We more or less deliberately though neglected to distribute the sound as well in the front of the vehicle as we did in the latter two-thirds or rear of the vehicle for the reason that we didn't wish to have the sound 445 level as high at the operators point, where he sits, as it would be at the back of the bus or the latter three-quarters of the bus or streetcar as the case may be.

Q. Were you present at the time we had the testimony as to the measurements made and the introduction in evidence by Mr. McIntosh of those measurements? A. I was.

Q. Those measurements bear your findings out as to the distribution of sound level insofar as the radio is concerned as regards the front, middle and rear of the bus? A. Yes, the acoustical measurements as made by Mr. McIntosh and as listed on his exhibit there will show that there is from four to six decibals differential between the sound level beginning about ten or twelve feet back in the bus to the rear as compared to the operator's portion.

Q. That can only be determined when the bus is standing still, however. A. Yes, I believe that is correct. As I remember the measurements when we were making these measurements the sound level created by the street noises and created by the vehicle itself exceeded and was by far the dominant sound in the vehicle.

Under those conditions, of course, then the sound at the operator's position would be greater than the lower radio sound which in that case would then more or less 446 blank out the radio.

Q. How is the volume level which is now being used determined? A. That was also done experimentally, over a year ago. We first had a committee which made more or less the selection of the volume level. That committee was composed of members of the Capital Transit Company staff and also of the WWDC staff.

Q. Who headed up the staff of the Capital Transit Company? A. As I recall Mr. Giddings was there and Mr.

Savage who is an engineer in the mechanical division of the Capital Transit Company.

Q. They participated in these tests where you determine the sound level to be used? A. Yes. Of course there was also the operator of the vehicle that was there.

That was only the first test. We took a bus because at that time that was the only vehicle that we were installing receivers in. That was in February, in fact, it was on February 10 or 9 of this year, 1949. We had a bus that we drove over various terrain or various streets which we thought would be representative of the streets in Washington and at various speeds. We determined from that,

we increased the level of the volume and decreased it until we finally found a point that we felt was the best compromise. After making this determination and all agreeing that it was probably the best sound level, the set was removed from the vehicle and put back on the test bench at which time the voltages that were set up by sound reproduction from the receiver were measured.

We took that then and used that more or less as a standard. Since then, however, we have continued to experiment and we have found to a large extent that we have readjusted this level downward, not a great deal but some, for more comfortable or we feel, more comfortable listening level and still we are able to have a reasonable degree of intelligibility both in music and speech.

Q. Now you use this volume that you determined on the bench as your base volume level and then I understand that you make adjustments as the installations go in? A. Let me go a little further on that. We have measured innumerable receivers; that is, after our men have gotten on streetcars and busses and they have asked operators, they have asked passengers, whether or not they felt that the volume level was approximately right, and if they felt it was too high, they would readjust it and ask them, "Now, do you think it is all right?" And more or less let the passengers or operators tell them when they think the level is approximately right.

448 Then we would take those sets out and measure them. The thing is that we have averaged the measurements of, oh, I would suppose 100 receivers to come out with the standard level that we have now.

Now after getting this standard level we adjust all receivers as they go across the test bench to that standard level. Then to answer your question, minor variations, that is, we make minor adjustments on the vehicle when the receiver is installed to compensate for any noise conditions that might be existent on a particular vehicle.

As shown in Mr. McIntosh's exhibit, some vehicles are noisier than others and necessarily if that is true, there must be a slight variation in the standard sound level that we have established.

On the other hand, there are some that are quieter than others and we adjust those downward.

Q. When you set the volume and made these adjustments, does that volume remain? Is there any variation in the operation of the set after that is once done? A. Of the receivers that we have removed from service and have repaired them due to some minor fault one way or the other, we have measured these sound levels and I don't believe in any case have we ever found that the sound level has ever varied except under conditions which would cause it such as mechanical failures or tampering. We have

449 had some cases of tampering and we have had, as in any equipment, mechanical or electrical, you have some failures.

Q. Well now, what is the greatest period of mechanical failures; that is, when they are first installed or after they have been in or when? A. Always, in any new equipment, new installation, you have more or less a shake-down cruise. Any equipment that is installed is more likely to fail during the first few hours or possibly few days of operation that it is apt to do after you have gotten to the point where in the trade we call it "got the bugs out."

Q. Is it your testimony that once this shake-down cruise

has been completed on each net set that the mechanical failures which might cause variations or sets to operate improperly becomes considerably less? A. Oh yes. In fact, we feel that many of the complaints that have been received by the Commission and ourselves and Capital Transit Company have been as a result of these so-called shake-down periods.

There is no way you can avoid it. You can't anticipate what it will be. We do everything in the world we can to prevent these failures but in case of a failure the set may go completely dead or in some cases the level of the set may rise a few decibels.

Q. I recall early in the testimony that Mr. Sager
450 testified that in July he rode a vehicle which he thought was too loud. Were you making any installations in July and August? A. The major portion of the installations was made in July and August.

Q. Of the 200-some odd sets? A. Yes. We ran 21 or 22 vehicles for a period of several months for test and then beginning just about July 1, we started on more or less mass installations.

Q. Mr. Beville, do you have any system of maintenance checks on these receivers once they are installed? A. We have a most elaborate test and check system. We are able to check every radio-equipped vehicle in the Transit Company system at least once a week and usually—not usually but sometimes two, three or four times a week.

Q. You have men on the street engaged in that? A. Yes.

Q. What provisions are made in handling mechanical failures which occur between these maintenance checks?

A. The Transit Company operators report those to the Transit Company which in turn report to us.

Q. How do you handle cases of complaints that are turned in between your periods of maintenance checks, between these periodic checks? A. For example, if the
451 complaint is one of the nature that, say for example, if we received a complaint that the set is a little too

loud, in most cases, if the set is too loud, you would find that the operator or inspector had turned it off if it was actually causing annoyance.

On the other hand, there are degrees of loudness. If a set may be just slightly loud in the opinion of the operator but not serious enough to turn off, he may report that and we may have a man there. Well, after we receive the report of the difficulty we will have the man on the job or dispatched to the job within 15 or 20 minutes.

Q. You say there is a method of turning off the sets though in the event the operator feels that they are operating too loud to permit safe operation of the vehicle? A. There is an emergency switch provided for that purpose.

Q. Do you handle or investigate complaints that are received from any other source than Capital Transit Company? A. Yes, those complaints are reports that we receive from people other than those working for Capital Transit Company and WWDC which are just as valuable as if we had employed someone to tell us that the set is not operating properly. We investigate any specific complaint that gives us enough information to track down the vehicle, we investigate as quickly as we can.

452 Q. Mr. Beville, is there any difference in the median sound level, measurable sound level, between the radio sets when they are operating on voice and music?

A. The measurable difference acoustically is hardly discernable. You apparently are referring to the notion, or rather there is information to the effect that we raise the voice levels on commercials higher than we do on any other program material. It is hard to answer this question definitely one way or the other due to the fact that a voice the average person the average power contained in voice modulation is much less than the average power contained in music which has a more sustained or sustaining type of material than the voice would have and, therefore, the average power of the voice is much less.

It is a known fact that noise affects more adversely speech than it does music and that being the case you must

raise to some extent the voice under given noise conditions to make speeches intelligible as music, you must raise it slightly. However, that is only electrically within the receiver.

Measurably, acoustically, you can't tell the difference.

Q. May I ask there whether the measurements that were made—were you present at the time the measurements were made by Mr. McIntosh, which he introduced? A.

Yes.

453 Q. Did those measurements include measurements while the car was having both speech and music?

A. Yes, those measurements were made over a period of hours. The measurements were made under the supervision and direction of Mr. McIntosh and some by him entirely. I was present there and the average readings were as was listed there in the testimony. That continued, for example, one of the measurements that was made, I believe the streetcar was boarded at the corner of 17th and K Streets and measurements were made continually all the way from I Street to the end of the Mt. Pleasant line.

That being the case you were able to come up with an average and of course there were many voice announcements as well as music during that period. We were unable to find that there was any difference, measureable difference acoustically, in the voice and the music.

That is the reason, for example, that you must change the gain of a receiver slightly. It is a compensating device is what it is. A compensating device is something that makes up for deficiencies in the original circuits or original system and there are deficiencies in the system when it comes to speech and, therefore, you have a compensating device which simply raises the speech level to the same point as the music level and makes it equally intelligible.

Capital Transit Company Exhibit No. 1.

AGREEMENT

This agreement made this 13th day of December, 1948, by and between Capital Transit Company, hereinafter sometimes referred to as Capital, and Washington Transit Radio, Inc., hereinafter sometimes referred to as Radio,

WITNESSETH:

Whereas, Capital operates certain street cars and busses within the Washington metropolitan area and, as a part of its service to its patrons, desires to make available to them music, news and other entertainment and to secure revenue from advertising; and

Whereas, and for this purpose, Radio is desirous of installing and maintaining the equipment necessary to receive audio communications by electronic means in the street cars and busses owned and/or operated by Capital;

Now, Therefore, in consideration of the mutual covenants herein contained, it is agreed:

I

DEFINITIONS

Wherever used herein, the following terms shall be deemed to have the following meanings:

(1) *Audio*. The term "audio" shall mean a system of broadcasting sound messages unaccompanied by visual messages.

(2) *Television*. The term "television" or "visual" shall mean visual messages accompanied by sound messages related thereto.

(3) *Right of first refusal*. "Right of first refusal" shall mean Radio's right to meet a bona fide written offer made by another to Capital. It must be exercised within thirty (30) days of written notice thereof from Capital to Radio.

(4) *Notice*. Wherever "notice" is required in this Agreement, it shall be made in writing and transmitted via registered mail to Capital at its main office, 36th

and M Streets, N. W., Washington 7, D. C., and to Radio at 1000 Connecticut Avenue, N. W., Washington, D. C., unless either party by written notice to the other specifies a different place.

(5) *Receivers.* "Receivers" shall mean FM radio broadcast receivers and their necessary auxiliary equipment including loudspeakers, designed for satisfactory service in mobile equipment, such as is operated by Capital.

(6) *Broadcast station.* "Broadcast station" shall mean a radio broadcasting station whose programs are received over the equipment installed by Radio in Capital's facilities for those hours of operation during which programs are so received.

(7) *Capital's facilities.* "Capital's facilities" shall include street cars, busses, terminal facilities, waiting rooms and division headquarters owned and/or operated by Capital within the Washington metropolitan district.

(8) *Annual gross transit income.* "Annual gross transit income" shall mean the total broadcast revenue collected by Broadcast Station during each twelve (12) month period for the periods of time during which programs were received over the equipment installed in Capital's facilities, after any usual and customary sales and agency commissions paid, which shall, in no event, exceed thirty per cent (30%) of the cost to the purchasers of time. A radio installation shall be deemed to exist whenever equipment has been installed by Radio in a vehicle which is in regular use, or other facility of Capital; the installation shall be deemed to have occurred in any month during which actual installation was completed prior to the fifteenth (15th) day thereof.

H

RADIO'S EXCLUSIVE RIGHT TO INSTALL AUDIO RECEIVING EQUIPMENT

Radio shall have the exclusive right to install, maintain and use equipment designed to receive audio communications by electronic means, including any and all equipment required in connection therewith, in Capital's facilities and

to provide for the reception of programs over such equipment during the term of this Agreement. This shall not restrict Capital's right to install radio equipment for the purpose of transmitting orders and information to its employees, or for any other purpose not reasonably within the scope of this Agreement.

III

INSTALLATION, MAINTENANCE AND OPERATION OF EQUIPMENT

All receivers shall be acquired, installed, repaired and maintained by Radio at its own expense.

(3) ~~Periodic~~ *Periodic Inspection of Equipment.* Radio shall make periodic inspections of and maintain all the radio equipment installed by it in good operating condition, replacing all broken or defective equipment. Radio shall have no obligation to make any repairs of its equipment which becomes defective between regular inspections unless Capital shall have notified it that any such equipment is out of order.

(4) *Manner and Time for Maintenance and Repairs.* Radio shall do all work of installation, maintenance, adjusting, replacing and removal of radio equipment in such a manner and at such times as will not interfere with the regularly scheduled operation of the vehicles, provided that Radio shall not be deemed to have breached its undertaking with respect to installation, maintenance or repairs if it has been unable to gain access to the vehicles in question for adequate periods of time. Capital shall, at its own expense, provide competent personnel to advise Radio with respect to installations, insofar as the installations require modification or alteration of Capital equipment. The placement of equipment shall be a matter of mutual agreement, it being understood, however, that neither party shall unreasonably withhold consent. Radio shall pay to Capital its cost of repairing any damage done to its facilities in

connection with the installation, maintenance and repair work promptly upon rendition of bills for the same. Whenever any radio equipment is permanently removed from any facility, Radio will pay to Capital its cost of restoring any part thereof affected by such removal to a condition equal to that of the remainder of the facility at the time of such removal, promptly upon rendition of bills for the same.

(6) *Notice Concerning Repairs.* Capital shall notify Radio promptly whenever any radio equipment is out of order.

(7) *Control of Receiving Equipment.* Radio shall have full control over the time or times of day that its radio equipment shall be operated, and Capital shall not turn off or disconnect the radio receiving system in any vehicles while it is operating on a regularly scheduled route, except when in the opinion of the operator of any such vehicle the radio equipment is not operating properly or the nature of the material being broadcast will jeopardize the operation of the vehicle according to normal standards of safety, or except when such vehicle is involved in an accident, and manual switches will be provided therefor. In all other instances, sets shall be turned on and off by Radio by electronic or other automatic means. It is expressly understood that the provisions of this paragraph shall not apply to equipment in vehicles operating under charter, which equipment may be turned on or off in the discretion of Capital.

IV

BROADCAST SERVICE TO BE RENDERED

In order to comply with its obligations hereunder, Radio will contract with a broadcast station for programs to be received in Capital's facilities for a minimum of eight (8) hours per day except Sundays. Radio warrants, and as a condition precedent hereto agrees, that no contract shall

be entered into by Radio with any Broadcast Station for programs which does not include the following provisions and warranties:

(a) Program content shall be of good quality and consonant with a high standard of public acceptance and responsibility, it being understood that all programs shall be carefully planned, edited and produced in accordance with accepted practices employed by qualified broadcasting stations.

(b) Commercial announcements shall not exceed sixty (60) seconds in duration, and cumulatively shall not exceed six (6) minutes in any sixty (60) minute period.

(c) Broadcast Station shall agree to cancel or suitably to modify any commercial continuity upon notice from Capital that said continuity, or the sponsor thereof, is objectionable. Broadcast Station shall further agree that it shall give notice to Capital within twenty-four (24) hours after the acceptance of each new sponsor.

(d) Capital is to receive without charge fifty per cent (50%) of the unsold time available for commercial continuity as provided in sub-section (b) hereof, (said free time not to exceed three (3) minutes in any sixty (60) minute period), for institutional and promotional announcements. All such announcements shall be subject to approval by Broadcast Station and all such time is subject to sale without notice.

(e) Broadcast Station shall agree to indemnify and hold Capital harmless from any and all damages and claims for damages arising out of material broadcast by Broadcast Station. Capital agrees to notify Radio and Broadcast Station immediately whenever such claims for damages are made and Broadcast Station shall have the right to defend or compromise any suit, claim or controversy.

(f) Broadcast Station shall submit within sixty (60) days of the close of each twelve (12) month period as hereinafter described an audit of its annual gross transit income as hereinbefore defined, prepared by a certified public accountant, and upon request by Radio or Capital, shall forthwith make available for inspection all its books of account and underlying data, specifically including cancelled checks and bank statements.

(g) Broadcast Station shall be authorized to operate as a Class B (Metropolitan) or C (Rural) FM station, or their equivalents, assigned to the City of Washington, D. C.

V

COMPENSATION

(2) *After Initial Period.* From and after the expiration of the initial ninety (90) day period provided for in Part III, Section (1) herein, compensation from Radio to Capital for each twelve month period thereafter shall be at the rate of Six Dollars (\$6.00) per month per radio installation, or on the following basis, if total compensation thereunder is higher:

*Where Gross Transit Income
for the 12-month Period is
between:*

Payment Due Shall Equal:

\$ 0 and \$100,000	10%
\$100,000.01 and \$200,000	\$ 10,000 plus 20% of the am't above \$100,000.01
\$200,000.01 and \$400,000	\$ 30,000 plus 33% of the am't above \$200,000.01
\$400,000.01 and \$500,000	\$ 96,000 plus 35% of the am't above \$400,000.01
\$500,000.01 and \$600,000	\$131,000 plus 45% of the am't above \$500,000.01
more than \$600,000.01	\$176,000 plus 50% of the am't above \$600,000.01

(3) *Interim Payments.* In order to keep payments from Radio to Capital reasonably current, monthly cash payments are to be made as follows: At the end of each month, Capital shall give Radio a written report of the number of radio installations in regular use during that month. Within ten (10) days thereafter, Radio shall pay Capital Six Dollars (\$6.00) for each such radio installation. After the end of each three (3) month period, Radio shall submit to Capital an audit which will include gross transit income for the preceding quarter, and a cash adjustment between the parties will be made by using a projected gross annual transit income determined by assuming that the said income for the balance of the twelve (12) month period will be at the same rate as actually occurred over the preceding three (3), six (6), or nine (9) month period, as the case may be. Said projected sum shall be divided by twelve (12) and multiplied by three (3), to determine the quarterly payment due in accordance with the schedule of charges provided for hereinabove. In making payments at the end of each such period, due allowance shall be made for previous payments during the preceding portion of each twelve (12) month period.

(4) *Annual Payments.* Within seventy-five (75) days following the end of each twelve (12) month period, a final accounting shall be made, followed by adjustments in cash payment from Radio to Capital or Capital to Radio, as the case may be, based upon the actual gross transit income for the period. Upon request of Capital, Radio shall make available for inspection all its books of account and underlying data, including cancelled checks and bank statements.

VII

TERMINATION, CANCELLATION AND RENEWAL

(4) *Unfavorable Public Reaction or Adverse Operating Condition.* In the event operations under this Agreement result in unfavorable public reaction or adverse operating conditions harmful to Capital, Capital shall notify Radio in writing to this effect. Within ten (10) days after such notice, Capital and Radio shall make a joint study and determination of the condition complained of through public opinion surveys, engineering studies, or such other methods as may be applicable and useful. If such condition is verified by these means and Radio is unable to rectify it within thirty (30) days to Capital's satisfaction, Capital may cancel this Agreement upon ten (10) days' notice in writing. In the event the rectification of the said condition requires equipment changes, Radio shall have a reasonable period of time to rectify the condition. It is understood and agreed that if the parties cannot agree on the existence or harm of the condition complained of, or the question of whether it has been properly rectified, such matters shall be submitted to arbitration in accordance with Part XI hereof.

In the event cancellation occurs as above, Capital shall assume the expense of removing the equipment and shall pay Radio an amount equal to the undepreciated value of the equipment, and Radio shall convey title to all of the equipment to Capital. As used in this section, undepreciated value of the equipment shall mean actual cost to Radio of the equipment plus the following representing cost of installation: For sets which have been installed for a period of three (3) years or less, Fifteen Dollars (\$15.00) per set; for those which have been installed more than three (3) years, Ten Dollars (\$10.00) per set.

IN WITNESS WHEREOF, the parties have hereunto
set their hands and seals this 13th day of December, 1948.

CAPITAL TRANSIT COMPANY,

By E. D. MERRILL,

President [Corporate Seal]

Attest:

WM. B. BENNETT,

Secretary

WASHINGTON TRANSIT RADIO, INC. ✓

By BEN STROUSE,

President [Corporate Seal]

Attest:

THOMAS N. DOWD,

Secretary

Capital Transit Company Exhibit No. 2.

CAPITAL TRANSIT COMPANY

RATE OF TRAFFIC ACCIDENTS PER 100,000 MILES TRANSIT
VEHICLES FIRST NINE MONTHS 1949 AND 1948:

	<i>Traffic Accidents</i> 1st 9 Months 1949	<i>Traffic Accidents</i> 1st 9 Months 1948
January	362	431
February	364	447
March	372	382
April	370	338
May	417	302
June	392	319
July	366	303
August	307	291
September	345	327
Total	3295	3140
Total Miles Operated	32,989,133	32,929,018
Rate per 100,000 Miles	9.99	9.54
Increase or Decrease—Plus	.45	

Capital Transit Company Exhibit No. 3.

CAPITAL TRANSIT COMPANY

RATE OF TRAFFIC ACCIDENTS PER 100,000 MILES ON RADIO
OPERATED VEHICLES FROM 2-10-49 TO 9-30-49.

COMPARED WITH SAME VEHICLES FOR SAME PERIOD 1948.

	<i>Traffic Accidents</i>	
	<i>After Radio Installation</i>	<i>Before Radio Installation</i>
February	5	3
March	2	6
April	5	7
May	11	4
June	8	VJ
July	34	30
August	43	48
September	53	48
Total	161	160
Total Miles Operated	1,826,602	1,784,675
Rate per 100,000 Miles	8.81	8.96
Increase or Decrease—Minus .15		

Washington Transit Radio Exhibit No. 13:

ENGINEERING REPORT

The following sound level measurements were taken from a random selection of street cars and buses of the Capital Transit Company:

Car or Bus No.	Position in car	Car in Motion		Car Standing with radio on
		Car Noise with Radio	Car Noise without Radio	
1511	Front	54db	54db	44db
	Middle	54db	54db	48db
	Rear	54db	54db	48db
1558	Front	58	58	46
	Middle	58	58	52
	Rear	58	58	52
5239	Front	56	56	48
	Middle	58	58	54
	Rear	60	60	54
1127	Front	70	70	60
	Middle	70	70	64
	Rear	70	70	64

Street noise at 14th and F Streets, N. W., made October 12—50db

Street noise at 14th and F Streets, N. W., made October 14—60db

All readings represent *average* values of sound level above the threshold-of-hearing (.0002 dynes per cm²) and were measured with a General Radio Company type 795-B sound level meter, serial No. 1747. The first three measurements were made October 12, 1949, with fair weather conditions and dry streets; the last measurement was made October 14 in rainy weather.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA
Order No. 3612.

In the Matter of Radio Reception in Busses and Street Cars
of Capital Transit Company.

P. U. C. No. 3490/1, Formal Case No. 390.

On July 14, 1949, this Commission, on its own motion, issued its Order No. 3560 instituting an investigation to determine whether or not the installation and use of radio receivers on the street cars and busses of Capital Transit Company is consistent with public convenience, comfort and safety. At that time, the Company had a number of street cars and busses equipped with radio receivers. It was generally understood that eventually most of the street cars and busses would be so equipped.

After appropriate notice, formal public hearings were held on the subject matter of the order of investigation on October 27, October 28, October 31, and November 1, 1949.

Washington Transit Radio, Inc., and Franklin S. Pollak and Guy Martin were granted the right to intervene and participated throughout the proceedings.

In addition to the participation of People's Counsel and of the interveners, appearance was noted for the Star-Times Publishing Company of St. Louis, Missouri.

Full opportunity was afforded the representatives of citizens and civic associations and of every other interested group, and to every individual present, to express their views respecting the matter before the Commission.

Brief was filed on November 23, 1949, by interveners, Franklin S. Pollak and Guy Martin.

Reply brief was filed jointly by Capital Transit Company and Washington Transit Radio, Inc., on December 5, 1949.

Positions of the Parties.

In their joint brief filed on December 5, 1949, Capital Transit Company and Washington Transit Radio, Inc., summarized their position in this proceeding as follows:

(a) That there is no substantial evidence of record showing that the installation of radio receivers on street cars and busses, and their use in reception of the type of program transmitted to them, is inconsistent with public convenience, comfort or safety;

(b) That the probative evidence of record is overwhelming in showing that there is no element of lack of safety involved in such installation and use of radios, and that the large majority of the transit riding public accept, and enjoy, and benefit by the programs received thereon;

(c) That individual or small minority group objections or contentions, based upon asserted rights, under the First or Fifth Amendments, to privacy, freedom of speech, liberty, and property, and dislike for the programs, in the Capital Transit Company vehicles available for public use, are without merit and are irrelevant to any issues in this proceeding arising out of the statutory powers of the Commission; and

(d) That this proceeding should be dismissed for want of evidence to sustain any lawful action by the Commission.

Interveners, Pollak and Martin, summarized their arguments in their brief filed on November 23, 1949, in the following manner:

(1) The use of radio receivers in the circumstances of this case deprives riders of freedom to listen or not to listen, in violation of the First Amendment to the Constitution, and deprives riders of liberty without due process of law in violation of the Fifth Amendment to the Constitution.

(2) The use of radio receivers in the circumstances of this case takes the private property of riders for private use in violation of the Fifth Amendment to the Constitution.

(3) Apart from constitutional questions, the use of radio receivers in the circumstances of this case is inconsistent with public convenience, comfort and safety because of the effects of the broadcasts on a significant number of riders and operators.

(4) The approval of these broadcasts by a majority of the riders and a majority of the operators is irrelevant.

Problem Before This Commission.

The investigation conducted and the evidence presented at the formal public hearings held on the subject of the installation of radios in the street cars and busses of Capital Transit Company must, of necessity, be considered by this Commission strictly in the light of its jurisdictional powers. The extent of these powers was indicated in the notice of investigation issued by the Commission on July 14, 1949, wherein the purpose of the investigation was defined as being the determination as to whether or not the installation and use of radio receivers in street cars and busses is consistent with public convenience, comfort and safety.

The Commission's decision on such issues must rest upon a basis more tangible than impassioned pleas which reflect personal feelings either in favor of or against radios in transportation vehicles.

As indicated above, one of the requirements contained in the Act which is administered by this Commission is that every public utility operating within the District of Columbia must furnish service and facilities that are reasonably safe. This Commission is given authority by such Act, after hearing upon its own motion or upon complaint, to direct such changes in equipment or condition of the vehicles of common carriers as are necessary to promote the comfort or convenience of the public. It was to these questions that the Commission's investigation was directed.

Summary of Testimony.

The record shows that, as of October 15, 1949, there were 212 radio sets installed in the Company's street cars and busses, and that it is contemplated that a total of 1500 sets will be installed.

On December 13, 1948, the Company entered into a contract with Washington Transit Radio, Inc., which provides, among other things, that the radio receiving equipment will be installed and maintained by Transit Radio without cost

to Capital Transit Company. Washington Transit Radio, Inc., in turn, has a contract with radio station WWDC-FM covering program service for reception in the vehicles of Capital Transit Company.

As indicated hereinabove, all interested parties were given full opportunity to express their views. At the beginning of the hearing, resolutions submitted to this Commission by the Federation of Citizens Associations and certain of its member associations were listed, and representatives from such associations were permitted to expand the views expressed by their groups. The Federation of Citizens Associations went on record as favoring the retention of radios in street cars and busses, as did the North Washington Council, which represents about 22 different associations, and the National Federation of Federal Employees, Local No. 2. Other associations favoring music on transportation vehicles included the Northeast Businessmen's Association, Inc., and the National Association of Letter Carriers. As to the individual Citizens' Associations which filed resolutions with this Commission, three expressed opposition to radios and 15 were in favor of their retention. A group of 43 persons, designating themselves as the Transit Riders Association, registered their opposition.

In general, the objections raised by individuals who attended the hearings to radios in transportation vehicles were based upon the following reasons, among others:

It interfered with their thinking, reading or chatting with their companions; it would lead to thought control; the noise was unbearable; the commercials, announcements and time signals were annoying; the music was of the poorest class; the practice deprived them of their right to listen or not to listen; they were being deprived of their property rights without due process; their health was being impaired; the safety of operation was threatened because of the effect of radios upon the operators of the vehicles.

Having in mind the salient points of public convenience, comfort and safety, the Commission has given very care-

ful consideration to the testimony bearing on these factors.

Captain Loraine T. Johnson, representing the Police Department of the District of Columbia, analyzed for the record statistics covering traffic accidents since July 7, 1949, in which street car and buses were involved and stated that, in his opinion, radio-equipped vehicles do not enter into the traffic picture at all.

William H. Voltz, Planning Engineer of the Department of Vehicles and Traffic, stated that, in the absence of any evidence that radios in motor vehicles have been a contributing factor in traffic accidents, the Department, which he represented does not now consider such installations to be a traffic matter.

The Engineering Bureau of this Commission, through F. A. Sager, Chief Engineer, concluded that when the radio is properly tuned safety of operation is not impaired due to the operation of the radio.

Employees of Capital Transit Company charged with the supervision and instructing of street car and bus operators testified that they have not found, in the performance of their duties, that the reception from radios interfered with their operation of the vehicles nor with the safety of their operation. These witnesses also testified that it was apparent that reception over the radio speakers did not affect the safety of operation by other operators observed by them as instructors or supervisors. Further, the witnesses stated that the radio reception does not interfere with the ability of the operator to hear street signals, such as policemen's whistles and auto horns.

It was the opinion of the operators that music on the vehicles had a tendency to keep the passengers in a better mood, and that it simplified transit operations.

An analysis of the accidents involving street cars and buses reflects the fact that the radio does not in any way interfere with efficient operation and has not been the cause of any accidents, according to the testimony of a Company witness who is a safety supervisor.

A public opinion survey was conducted by Edward G. Doody & Company, from October 11, 1949 to October 17, 1949, in order to determine the attitude of Capital Transit Company customers toward transit radio. Their survey employed the rules of random selection and was confined to interviews aboard radio-equipped vehicles. The principal results obtained through the survey, as presented in this record, were as follows:

Of those interviewed, 93.4 per cent were not opposed; that is, 76.3 were in favor, 13.9 said they didn't care, and 3.2 said they didn't know; 6.6 per cent were not in favor, but when asked the question "Well, even though you don't care for such programs personally, would you object if the majority of passengers wanted buses and street cars equipped with radio receivers," 3.6 said they would not object or oppose the majority will. Thus, a balance of 3 per cent of those interviewed were firmly opposed to the use of radios in transit vehicles.

Testimony presented by Frank F. McIntosh, Consulting Engineer, related to absolute sound levels obtained in a number of street cars and buses. The measurements were taken by Mr. McIntosh at three points; namely, at the front of the vehicle—near the driver—at the middle of the vehicle, and within about six feet of the rear of the vehicle. Also, the measurements were made while the vehicle was in motion, with and without the radio on, and while the vehicle was standing with the radio on. The measurements were made in terms of decibels, which, roughly speaking, represents the smallest increment of increase or decrease in audio level that the ear can obtain or understand or recognize.

The testimony of this witness was to the effect that the actual energy contributed by the radio was so small that it was not possible on the meter to measure the difference in sound level with the radio on and off. He explained that the reason the radio is heard is not necessarily a matter of straight energy. It is a matter of the working of the

mind; that is, a person can differentiate between sounds or can get used to a sound and put it out of his mind. The witness also testified that it is not possible to provide enough energy through a radio sound system that could economically be put in a car to mask out other sounds.

Other arguments presented for the consideration of the Commission pertained to the use of radios in street cars and buses at times for public purposes, such as the necessary or emergency rerouting of vehicles; the publicizing of public interest enterprises, and for the protection of the public in time of crisis.

Conclusion.

From the testimony of record, the conclusion is incapable that radio reception in street cars and buses is not an obstacle to safety of operation.

Further, it is evident that public comfort and convenience is not impaired and that, in fact, through the creation of better will among passengers, it tends to improve the conditions under which the public rides.

In the light of these conclusions, it is obvious that the installation and use of radios in street cars and buses of the Capital Transit Company is not inconsistent with public convenience, comfort and safety. For the foregoing reasons,

IT IS ORDERED:

That the investigation initiated by Commission Order No. 3560 be, and it is hereby, dismissed.

A TRUE COPY:

N. H. HETZEL,

Chief Clerk.

By the Commission:

E. J. MILLIGAN,

Executive Secretary.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 3631

February 15, 1950

IN THE MATTER OF

Radio Reception in Buses and Street Cars of

CAPITAL TRANSIT COMPANY.

P. U. C. No. 3490/1,

Formal Case No. 390.

**Order Denying Applications for Reconsideration of
Commission Order No. 3612.**

The Commission has received applications for reconsideration of Order No. 3612 from Franklin S. Pollak and Guy Martin, Paul N. Temple, Jr., Transit Riders' Association, Hector G. Spaulding and others, Bernard Tassler for himself and for National Citizens' Committee Against Forced Reading and Forced Listening, and Progressive Citizens Association of Georgetown. Careful consideration has been given to the representations set forth in all of the said applications, and they have been duly considered in the light of the testimony of record before the Commission and its findings and opinion accompanying Order No. 3612. The Commission is of opinion that its findings and opinion and Order No. 3612 are clearly supported by the testimony of record and should be affirmed. For those reasons, the said applications for reconsideration will be denied.

IT IS ORDERED:

That the applications for reconsideration of Order No. 3612 filed by Franklin S. Pollak and Guy Martin, Paul N. Temple, Jr., Transit Riders' Association, Hector G. Spaulding and others, Bernard Tassler for himself and for National Citizens' Committee Against Forced Reading and

Forced Listening, and Progressive Citizens Association of Georgetown be, and they are hereby, denied.

A TRUE COPY:

N. H. HETZEL,
Chief Clerk.

By the Commission:

E. J. MILLIGAN,
Executive Secretary.

[fol. 123] Minute entry of argument (omitted in printing).

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United States Court of Appeals

FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 10777.

FRANKLIN S. POLLAK AND GUY MARTIN, APPELLANTS

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA,
et al.; APPELLEES

Appeal from the United States District Court for the District
of Columbia

Decided June 1, 1951

Mr. Paul M. Segal, with whom *Mr. Franklin S. Poliak* was on the brief, *pro se*, for appellants. *Messrs. Harry P. Warner* and *Quayle B. Smith* entered appearances for appellants.

Mr. Dargal A. Myse, with whom *Messrs. Edmund L. Jones* and *F. G. Awalt* were on the brief, for appellee Capital Transit Company.

Mr. Lloyd B. Harrison, Counsel, Public Utilities Commission of the District of Columbia, with whom *Mr. Vernon E. West*, Corporation Counsel, D. C., was on the brief, for appellee Public Utilities Commission of the District of Columbia.

Mr. W. Theodore Pierson, with whom *Messrs. Vernon C. Kohlhaas* and *Thomas N. Dowd* were on the brief, for appellee Washington Transit Radio, Inc.

Messrs. Morris L. Ernst, *James Lawrence Fly*, *Osmond K. Fraenkel*, *Alexander B. Hawes*, *Arthur Garfield Hays*, and *Laurence A. Knapp* filed a brief on behalf of the American Civil Liberties Union as *amicus curiae* urging reversal.

Before EDGERTON, BAZELON, AND FAHY, Circuit Judges.

EDGERTON, *Circuit Judge*: Appellee Capital Transit Company (Transit) operates streetcars and buses in the District of Columbia. In 1948 Transit made a contract with appellee Washington Transit Radio, Inc., (Radio) by which Radio was to install and maintain loudspeakers in Transit vehicles and provide broadcasts at least 8 hours¹ daily except Sunday. In October, 1949, loudspeakers were in

¹ At the time of the Commission's hearing, actual hours of operation were 7 a.m. to 7 p.m.

operation in 212 vehicles and it was planned to increase the number to 1,500.

Though Transit and Radio call the broadcasts "music as you ride", they include not only music but also "commercial, announcements, and time signals". The contract permits six minutes of "commercial announcements" per hour. These vary from 15 to 35 seconds in length and are usually scheduled about once in five minutes, though the interval varies.

Appellee Public Utilities Commission received protests against Transit's use of radio. It ordered an investigation and held a hearing "to determine whether . . . the installation and use of radio receivers on the street cars and busses of Capital Transit Company is consistent with public convenience, comfort and safety . . .". Appellants, who ride Transit vehicles, and other persons and organizations were allowed to intervege and took part in the hearing. The Commission found that transit radio does not reduce safety, "tends to improve the conditions under which the public rides," and "is not inconsistent with public convenience, comfort and safety." The Commission's final order "dismissed" its investigation.

Appellants and others appealed to the District Court from the Commission's order. Appellants' petition of appeal states that appellants are "obliged to use the street cars and busses of Capital Transit Company in connection with the practice of their profession and on other occasions and are thereby subjected against their will to the broadcasts in issue. These broadcasts make it difficult for petitioners to read and converse . . ." Each of the appellees, i.e. the Commission, Transit, and Radio, moved to dismiss the petitions of appeal as not stating claims on which relief could be granted and as not within the court's jurisdiction. The court dismissed the petitions on the ground that "no legal right of the petitioners . . . has been invaded . . ." This appeal followed.

Appellants' chief contention is that Transit radio deprives them of liberty without due process of law in violation of the Fifth Amendment of the Constitution.

1. The jurisdiction of the Public Utilities Commission, the District Court, and this court are clear. All public utilities are required by Act of Congress to "furnish service and facilities reasonably safe and adequate and in all respects just and reasonable" and the term "service" is used "in its broadest and most inclusive sense." D. C. Code (1940) §§ 43-301, 43-104. The Commission is authorized to fix and enforce standards of service. §§ 43-320, 43-303, 43-1002.

Since the Commission's order was its final decision that Transit may use loudspeakers in its streetcars and buses, the order was appealable. "Any . . . person . . . affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may" appeal to the District Court and from that court to this. D. C. Code (1940) § 43-705. "Administrative determinations which are not commands may for all practical purposes determine rights as effectively as the judgment of a court, and may be reexamined by courts under particular statutes providing for the review of orders." *American Federation of Labor v. National Labor Relations Board*, 308 U. S. 401, 408. Since the appellants use the

service of Transit and intervened before the Commission they are "affected by" the Commission's order and may appeal.²

2. Transit passengers commonly have to hear the broadcasts whether they want to or not.³ The Commission made no finding on this point but the fact is well known. It was proved by many witnesses. It is in legal effect admitted by appellees' motions to dismiss the petition of appeal, since the petition states that appellants "are subjected against their will to the broadcasts in issue. These broadcasts make it difficult for petitioners to read and converse . . ." The brief of appellee Radio admits the fact in these terms: "it is impossible to give effect to this alleged right [not to listen] without frustrating the desire of other passengers to listen . . ." Appellee Transit says in its brief: "The record shows that *every precaution is taken* in the installation of the equipment and its maintenance *to minimize the sound level at the operators' position* and to distribute sound evenly throughout the public spaces in the vehicle . . ."⁴ WWDC-FM, the transmitting station, advertised in 1949 that Transit Radio was "delivering a guaranteed audience."⁵ The passengers are known in the industry as a "captive audience". Formerly they were free to read, talk, meditate, or relax. The broadcasts have replaced freedom of attention with forced listening.

Most people have to use mass transportation. In the District of Columbia this means they have to use Transit and hear the broadcasts. Even as between the District and the adjoining Pentagon region in Virginia the Supreme Court has said: ". . . most government employees, in going to and returning from their work, were compelled to begin or complete their trips by utilizing buses of street-

² *Henderson v. United States*, 339 U. S. 816. In *United States v. Public Utilities Commission*, 80 U. S. App. D. C. 227, 151 F. 2d 609, we held that a consumer of electricity and intervenor before the Commission was "affected by" and could appeal from a Commission order fixing electric rates. We said (p. 231): "Congress has used language, throughout the applicable Code sections, indicating an intention that consumers shall have a right to challenge the Commission's actions."

³ Appellants' supplementary application to the Commission for rehearing contains a physicist's affidavit explaining in technical terms that "the ear hears plainly at its low sound level what the meter does not detect at its high sound level."

⁴ Emphasis added.

⁵ THE 1949 RADIO ANNUAL, p. 363.

In their supplementary application for reconsideration, appellants referred to "a brochure issued by Transit Radio, Inc.," the corporation described by a witness for Washington Transit Radio, Inc., as the national or parent company. This brochure is entitled "A New Idea—A New Voice—A New Medium for Advertisers—transit radio." Washington is one of the cities concerning which it says: "The advertiser knows how large an audience he is reaching in each Transit Radio city because the rate he pays is based essentially on the actual count of paid passenger fares. No surveys are necessary—guesswork plays no part. . . . Transit radio . . . provides a definitely measurable audience . . . When the studio microphone is switched on for the announcer to read a commercial, the transmitter automatically emits a supersonic note which activates the voice emphasis circuit and raises the volume about 25 per cent. The result: *Everyone hears the commercial!* . . . Speakers are mounted on the overhead panels, alternately on the right and left sides, so that every passenger gets perfect reception from a speaker just overhead. If they can hear—they can hear your commercial!" Appellants asked to be permitted to examine concerning the "25 per cent" statement a witness who had testified that "The measurable difference acoustically" between the radio sets when operating on voice and on music "is

cars of Capital Transit." *United States v. Capital Transit Co.*, 325 U. S. 357, 359.

3. Though statutes and the law of torts forbid invasions of liberty by private individuals, the constitutional guarantees of liberty are directed against government action. But acts of individuals are beyond the reach of these guarantees only when they are "unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings." *Civil-Right Cases*, 109 U. S. 3, 17. For example, since *Smith v. Allwright*, 321 U. S. 649, was decided a state cannot "by permitting a party to take over a part of its election machinery . . . avoid the provisions of the Constitution forbidding racial discrimination in elections . . ." *Rice v. Elmore*, 165 F. 2d 387, 339 (C. A. 4th). A private corporation that owns the streets of a town may no more abridge the freedoms of press and religion than a municipality regularly organized. *Marsh v. Alabama*, 326 U. S. 501, 506. The Supreme Court has recently said: "When authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." *American Communications Ass'n v. Douds*, 339 U. S. 382, 401.

The forced listening imposed on Transit passengers results from government action. By authorizing Transit and forbidding others to operate local streetcars and buses, Congress made it necessary to ride the vehicles in which Transit makes it necessary to hear the broadcasts. Streetcars and buses cannot operate in city streets without a franchise. Congress has given Transit not only a franchise but a virtual monopoly of the entire local business of mass transportation of passengers in the District of Columbia.⁶

Furthermore the forced listening has been sanctioned by the governmental action of the Commission. If the Commission had found it contrary to public comfort or convenience, or unreasonable, it would have stopped. Because the Commission decided otherwise it continues. To suggest that a "negative" order cannot be the final step in a misuse of government power is to assert a distinction the Supreme Court has repudiated. ". . . An order of the Commission dismissing a complaint on the merits and maintaining the *status quo* is an exercise of administrative function, no more and no less, than an order directing some change in status." *Rochester Tel. Co. v. United States*, 307 U. S. 125, 142. *Mitchell v. United States*, 313 U. S. 80, 92; *Henderson v. United States*, 339 U. S. 816. Even failure to enter any order may be a denial of constitutional rights. *Smith v. Illinois Bell Tel. Co.*, 270 U. S. 587. By dismissing its investigation

⁶ The monopoly is apparently complete except that an interurban line that operates in one part of the District carries local passengers. This line also, according to the testimony, subjects its passengers to forced listening.

Transit was formed under an Act and a Joint Resolution of Congress, by a merger of previously independent lines. Act of March 4, 1925, 43 Stat. 1265; Joint Resolution of January 14, 1933, 47 Stat. 752.

Congress authorized the end of competition and enacted that there should be no new competition except upon a showing exceedingly difficult to make. "No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia to the effect that the competitive line is necessary for the convenience of the public." Sec. 4 of the

the Commission declined to prevent valid action of Congress from having an unintended and unnecessary result.

4. No occasion had arisen until now to give effect to freedom from forced listening as a constitutional right.⁶ Short of imprisonment, the only way to compel a man's attention for many minutes is to bombard him with sound that he cannot ignore in a place where he must be. The law of nuisance protects him at home.⁷ At home or at work, the constitutional question has not arisen because the government has taken no part in forcing people to listen. Until radio was developed and someone realized that the passengers of a transportation monopoly are a captive audience, there was no profitable way of forcing people to listen while they travel between home and work or on necessary errands. Exploitation of this audience through assault on the unavertible sense of hearing is a new phenomenon. It raises "issues that were not implied in the means of communication known or contemplated by Franklin and Jefferson and Madison."⁸ But the Bill of Rights, as appellants say in their brief, can keep up with anything an advertising man or an electronics engineer can think of. In *United States v. Classic*, Mr. Justice Stone said for the Supreme Court: "in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." 313 U. S. 299, 316.

If Transit obliged its passengers to read what it liked or get off the car, invasion of their freedom would be obvious. Transit obliges them to hear what it likes or get off the car. Freedom of attention, which forced listening destroys, is a part of liberty essential to individuals and to society.⁹ The Supreme Court has said that the constitutional guarantee of liberty "embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties . . ."¹⁰ One who is subjected to forced listening is not free in the enjoyment of all his faculties.

Both the decision and the opinions in *Kovacs v. Cooper*, 336 U. S. 77, give great weight to the public interest in freedom from forced listening. The Supreme Court upheld a municipal ordinance prohibiting loud and raucous sound trucks in public streets. Mr. Justice Reed's opinion, for three Justices, said (pp. 86-87): "The unwilling listener is not like the passer-by who may be offered a pamphlet in the street but cannot be made to take it. In his home or on the street he is practically helpless to escape this interference with his privacy by loud speakers except through the protection of the municipality." Kovacs had broadcast, along with music, comment on a labor dispute. He contended that the ordinance abridged his freedom

⁶ *Stodder v. Rosen Talking Machine Co.*, 241 Mass. 245, 135 N. E. 251; 247 Mass. 60, 141 N. E. 569; *Fos v. Thomassie*, 26 So. 2d 402 (Cl. Ap. La. 1946); *Five Oaks Corp. v. Gathmann*, 58 A. 2d 656 (Cl. Ap. Md. 1948).

⁸ Mr. Justice Frankfurter, concurring, in *Kovacs v. Cooper*, 336 U. S. 77, 96.

⁹ "The right of free speech is guaranteed every citizen that he may reach the minds of willing listeners . . ." Mr. Justice Reed in *Kovacs v. Cooper*, 336 U. S. 77, 87.

¹⁰ *Quinn v. University of Louisiana*, 297 U. S. 248, 244.

of speech. The Supreme Court's decision upholding the ordinance means that the public interest in freedom from forced listening is so important as to outweigh even the public interest in making more effective, by amplifying, a communication protected by the First Amendment. It would seem to follow that the public interest in freedom from forced listening outweighs the private interest in making more effective, by amplifying, a communication not protected by the First Amendment. The Amendment does not protect commercial advertising.¹¹

Validation of the forced listening involved here would result in this curious paradox. Although a municipality may forbid speech protected by the First Amendment from being broadcast in a street, where no one need hear it more than a few minutes, speech not protected by the First Amendment may be broadcast in a streetcar where passengers must hear it for a substantial time.

Of course freedom from forced listening, like other freedoms, is not absolute. No doubt the government may compel attention, as it may forbid speech, in exceptional circumstances. But a deprivation of liberty to which the government is a party is unconstitutional when it is "arbitrary or without reasonable relation to some purpose within the competency of the State to effect." *Meyer v. Nebraska*, 262 U. S. 390, 400. Forcing Transit passengers to hear these broadcasts has no reasonable relation to any such purpose.¹² Some discomforts may perhaps be inevitable incidents of mass transportation, but forced listening is neither incidental nor inevitable. It deprives the appellants and other passengers who object to the broadcasts of their liberty for the private use of Transit, Radio, and passengers who like the broadcasts. This loss of freedom of attention is the more serious because many people have little time to read, consider, or discuss what they like, or to relax. The record makes it plain that the loss is a serious injury to many passengers.¹³ They suffer not only the discomfort of hearing what they dislike but a sense of outrage at being compelled to hear whatever Transit and Radio choose.

Willing hearers are entertained by the broadcasts. But the profit of Transit and Radio and the entertainment of one group of passengers cannot justify depriving another group of passengers of their liberty.¹⁴ The interest of some in hearing what they like is not a right to make others hear the same thing.¹⁵ Even if an impartial survey had shown that most passengers liked the broadcasts or were

¹¹ *Edentine v. Christensen*, 236 U. S. 52.

¹² The record contains a suggestion that Transit broadcasts might be useful in "panic control" and other emergencies. But one powerful loudspeaker in each vehicle, available for use when needed, would serve any such purpose. The suggestion is no argument for maintaining six loudspeakers in each vehicle and operating them 12 hours a day.

¹³ Objection to forced listening is not limited to people who dislike radio. One objecting witness said: "I have three radios in my house and I have three reasons for liking them. The first reason is that you can always turn them off. The second one is that you can choose your program and the third is that you can regulate the volume."

¹⁴ Withdrawing this particular entertainment will no more deprive willing hearers of liberty than excluding a man from a particular place imprisons him.

¹⁵ The Chairman of the Commission said at the hearing: "The decision of the Commission will be made on the numbers of those saying 'I like it' and those

willing to tolerate them on the supposed chance of a money benefit,¹⁶ that would not be important, since the will of a majority cannot abrogate the constitutional rights of a minority. Moreover there is no evidence that any large group of passengers actually wish to go on being entertained by broadcasts forced upon other passengers at the cost of their comfort and freedom.¹⁷

5. It has been argued that when freedom of attention is abridged, freedom of speech and press are abridged, and that when Transit sells the forced attention of its passengers to Radio for advertising purposes it deprives them of property as well as liberty. Also, it may well be doubted whether Transit can perform its statutory duty of providing comfortable service for all by giving more than comfortable service to some and less than comfortable service to others. But we need not consider these issues. In our opinion Transit's broadcasts deprive objecting passengers of liberty without due process of law. Service that violates constitutional rights is not reasonable service. It follows that the Commission erred as a matter of law in finding that Transit's broadcasts are not inconsistent with public convenience, in failing to find that they are unreasonable, and in failing to stop them.¹⁸

This decision applies to "commercials" and to "announcements". We are not now called upon to decide whether occasional broadcasts of music alone would infringe constitutional rights.

6. Congress has provided that after hearing an appeal from the Public Utilities Commission the District Court "shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision." D. C. Code (1940) § 43-705. Counsel for the Commission contend that to vacate its order "would be an ineffectual thing, leaving the status quo as it existed prior to the initiation of the investigation", and that if constitutional rights are invaded it "may be the basis for suit for injunction under the court's general equity powers, but it is

¹⁶ The Commission did not find and nothing in the record suggests that Transit gets enough money from the broadcasts, in relation to the number of its passengers, to have any possible effect on fares.

¹⁷ An organization employed by appellees Transit and Radio to make a survey of passenger sentiment failed to ask persons who said they favored transit radio whether they would still favor it if they knew it caused serious annoyance to a substantial number of passengers. Yet this survey did ask persons who said they opposed transit radio whether they would still object if the majority approved. To investigate the altruism of the objecting group and not that of the approving group reflects bias and produces a biased result. Moreover the survey did not inquire into the intensity of likes and dislikes. It ignored the question how many persons have been induced by the broadcasts to use Transit less, or more, than formerly.

All persons interviewed were passengers on radio-equipped vehicles. According to the report 76.3% said they favored radio, 13.9% did not care, 3.2% "didn't know", and 6.6% objected but 3.6% said they would not oppose the majority will. An unbiased inquiry which did not claim to be scientific produced a different result. On November 6, 1949 the Washington Post printed two "ballots", one reading "Yes I favor radio broadcasts in streetcars and buses" and the other "No I do not favor radio broadcasts in streetcars and buses." On November 13, 1949 the Post reported that of the 5,402 ballots returned, 2,387 favored the broadcasts and 3,015, or 55.8%, did not.

¹⁸ The fact that administrative agencies may not consider issues involving the constitutionality of congressional action is irrelevant since there is no such issue

not a proper basis for an appeal from the Commission's order." In our opinion these contentions are erroneous and the appellants need not sue out an injunction. To say that they "must institute another and distinct proceeding, would be to put aside substance for needless ceremony." *Smith v. Illinois Bell Tel. Co.*, 270 U. S. 587, 591.

The Wagner Act provided that a Circuit Court of Appeals might enforce, modify and enforce, or set aside, an order of the National Labor Relations Board.¹⁹ It did not provide that a court might remand a cause to the Board for further proceedings. But in *Ford Motor Co. v. National Labor Relations Board*, 305 U. S. 364, 372-373, the Supreme Court held that "If the court itself had set aside the findings and order of the Board . . . the court could have remanded the cause for further proceedings in conformity with its opinion. . . . The jurisdiction to review the orders of the Labor Relations Board is vested in a court with equity powers, and while the court must act within the bounds of the statute and without intruding upon the administrative province, it may adjust its relief to the exigencies of the case in accordance with the equitable principles governing judicial action. The purpose of the judicial review is consonant with that of the administrative proceeding itself,—to secure a just result with a minimum of technical requirements. The statute with respect to a judicial review of orders of the Labor Relations Board follows closely the statutory provisions in relation to the orders of the Federal Trade Commission, and as to the latter it is well established that the court may remand the cause to the Commission for further proceedings . . ." Similarly in *Federal Power Commission v. Pacific Power & Light Co.*, 307 U. S. 156, 159-160, in holding that a Court of Appeals had jurisdiction to review a Power Commission order declining to authorize a transfer of corporate assets the Supreme Court said: "it is urged that . . . the court itself cannot lift the prohibition of the statute by granting permission for the transfer, nor order the Commission to grant such permission. And so it is claimed that any action of a court in setting aside the order of the Commission would be an empty gesture . . . But . . . The court has power to pass judgment upon challenged principles of law insofar as they are relevant to the disposition made by the Commission. . . . a judgment rendered will be a final and indisputable basis of action. . . ." *Interstate Commerce Comm'n v. Baird*, 194 U. S. 25, 38. In making such a judgment the court does not intrude upon the province of the Commission, while the constitutional requirements of 'Case' or 'Controversy' are satisfied. For purposes of judicial finality there is no more reason for assuming that a Commission will disregard the direction of a reviewing court than that a lower court will do so."

The judgment of the District Court is therefore reversed with instructions to vacate the Commission's order and remand the case to the Commission for further proceedings in conformity with this opinion.

Reversed.

[fol. 132] UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1951

No. 10777

FRANKLIN S. POLLAK and GUY MARTIN, Appellants,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF
COLUMBIA, et al.

Appeal from the United States District Court for the
District of Columbia

Before Edgerton, Bazelon and Fahy, Circuit Judges

JUDGMENT—Filed June 1, 1951

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the orders of the said District Court appealed from in this cause be, and the same are hereby, reversed, with costs of appellants to be borne by appellees except the Public Utilities Commission, and that this case be, and it is hereby, remanded to said District Court with instructions to vacate the order of the Public Utilities Commission and remand the case to the Commission for further proceedings in conformity with the opinion of this Court.

Per Circuit Judge Edgerton.

Dated June 1, 1951.

[File Endorsement Omitted].

[fol. 123-160] PETITION FOR REHEARING COVERING 28 PAGES
FILED JUNE 14, 1951 OMITTED FROM THIS PRINT. IT WAS
DENIED, AND NOTHING MORE BY ORDER.—July 6, 1951.

[fols. 161-166] ANSWER TO PETITION FOR REHEARING—Filed
June 22, 1951

[Omitted in Printing]

[fol. 167] IN UNITED STATES COURT OF APPEALS

[Title omitted]

Before Stephens, Chief Judge; Edgerton, Clark, Wilbur K.
Miller, Proctor, Bazelon, Fahy and Washington, Circuit
Judges

ORDER—Filed July 6, 1951

On consideration of the appellees' petition for a rehearing of the above-entitled case before the Court in banc and of the answer thereto, and a majority of the Circuit Judges of the Circuit having voted against a rehearing herein before the Court in banc, it is

Ordered by the Court in banc that the petition for rehearing before the Court in banc be, and it is hereby, denied.

Per Curiam.

Dated: July 6, 1951.

Circuit Judge Prettyman disqualified himself with respect to the petition for rehearing in banc herein and took no part in the disposition thereof.

[File Endorsement Omitted]

[fol. 168] DESIGNATION OF RECORD

[Omitted in Printing]

[fol. 169] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 170] SUPREME COURT OF THE UNITED STATES

No. 224, OCTOBER TERM, 1951

[Title Omitted]

ORDER ALLOWING CERTIORARI—Filed October 15, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 171] SUPREME COURT OF THE UNITED STATES

No. 295, OCTOBER TERM, 1951

[Title Omitted]

ORDER ALLOWING CERTIORARI—Filed October 15, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 172] IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

[Title Omitted]

MOTION FOR THE PRINTING OF ADDITIONAL PORTIONS OF THE
RECORD—Filed October 26, 1951

Franklin S. Pollak and Guy Martin, respondents in No. 224 and petitioners in No. 295, hereinafter referred to as appellees, respectfully move for an order directing the

printing of additional portions, hereinafter specified, of the record in this Court.

1. The additional portions of the record which appellees desire to have printed are part of the record in this Court. They were not printed in the Joint Appendix in the Court below and they are not contained in the printed record served on appellees with the petition for writ of certiorari in No. 224.

[fol. 173] 2. This motion is the only means available for obtaining the printing of the additional portions of the record because counsel for petitioners in No. 224 and respondents in No. 295 (hereinafter referred to as appellants) have refused to stipulate for the printing of these additional portions of the record, while stating at the same time that they will not oppose a motion for this purpose.

3. The additional portions of the record which appellees desire to have printed fall into two categories:

(a) Portions of the record before the Public Utilities Commission. These are a part of the record in this Court by reason of the fact that appellants designated them for certification from the District Court to the Court of Appeals. They consist of:

(i) Testimony and other evidence before the Commission which appellees consider relevant to other evidence already in the printed record here at the instance of appellants or to assertions of fact that were made by appellants in the Court of Appeals and appear likely to be renewed here.

(ii) The certificate from the Secretary of the Commission to the District Court, defining and transmitting the record before the Commission. This is similarly relevant.

(iii) A portion of appellees' prayer for relief before the Commission. This underlies appellees' cross-petition in No. 295.

(b) Designations, motion and order in the District Court which serve to define the record in this Court. These show which of the papers, and which portions of the papers, physically present in this Court, constitute the record in this Court.

4. Appellees did not move earlier in this Court for the relief now requested because they understood, after investigation [fol. 174] of the practice on the point, that this motion did not have to be made in conjunction with the petitions for certiorari, but could be deferred until those petitions were decided.

5. The reason why appellees desire this additional material to be printed in this Court, although they did not designate it for certification to the Court of Appeals or print it there, is that at the time for such designation and printing they were of the view that only the pleadings, and not the evidence, were before the Court of Appeals. Appellants considered that the evidence was before the Court of Appeals. They designated large quantities of it, and printed lesser quantities of it, for that Court, and argued it there extensively in their briefs, and that Court discussed it. The case having so developed, appellees now desire to have printed additional portions of the evidence designated below by appellants, but not printed by them.

6. The portions of the record here which appellees desire to have printed are the following:

1. Excerpts from Testimony of E. C. Giddings, page 156, line 16 to line 18; page 167, line 16 and line 17; page 169, line 4 to line 9.

2. Excerpts from Testimony of Hurlbert Taft, Jr., page 200, lines 2 to 6; page 200, line 21 to page 201, line 10.

3. Excerpts from Testimony of Norman Reed, page 340, line 14 to page 341, line 7; page 342, line 16 to line 23; page 343, line 24 to page 344, line 16; page 345, line 19, to page 346, line 2; page 347, line 10, to page 348, line 2; page 348, line 16, to page 350, line 4.

4. Excerpts from Testimony of Ben Strouse, page 361, line 22 to line 24; page 364, line 8 to line 16; page 370, line 6; page 372, line 15; page 372, line 25, to page 373, line 13.

[fol. 175] 5. Capital Transit Company Exhibit No. 1, to be printed in full, except that the following parts and sections are to be printed by title only, by which is meant that the indicated number is to be printed to-

gether with the immediately-following title, but not the ensuing text:

- a) Section (5) of Part III (page 5);
- b) Sections (5), (6), (7) and (8) of Part V (pages 8, 9 and 10);
- c) Part VI and sections (1) and (2) thereof (page 11);
- d) Sections (2) and (3) of Part VII (page 12);
- e) Part VIII and sections (1) and (2) thereof (pages 14 and 15);
- f) Sections (2) and (3) of Part IX (page 15);
- g) Part XI (page 16);
- h) Part XII (page 16).

6. Excerpts from Capital Transit Company's Exhibit No. 4:

- a) the title page;
- b) On page 8, the last printed paragraph;
- c) All of page 9, except the last three lines;
- d) Page 11, the entire page.

7. Excerpts from Exhibit No. 9 entitled "Station WWDC-FM, Thursday, October 13, 1949":

- a) Pages 1 to 3 inclusive.

8. All of Exhibit No. 10, the first page of which is entitled "WWDC-FM Standard Opening Announcement."

[fols. 176-178] 9. Excerpts from Application of Franklin S. Pollak, Intervener, and Guy Martin, Intervener, for Reconsideration and Other Relief:

- a) heading on title page;
- b) All of page 1 to the end of the first paragraph on page 2.

10. Certificate of the Secretary of the Public Utilities Commission.

11. Designation of Record on Appeal filed July 26, 1950, being pages 44 to 45 of the Transcript of Record in the United States Court of Appeals.

12. Respondent's-Intervenors' Counter Designation of Record on Appeal, filed August 4, 1950, being pages 47 to 49, inclusive, of the said Transcript of Record.

13. Motion to Transmit Record Before Public Utilities Commission to United States Court of Appeals for the District of Columbia Circuit, filed August 24, 1950, being pages 52 to 53, inclusive, of the said Transcript of Record.

14. Order granting the last-mentioned motion, signed by Judge Matthews, filed August 24, 1950, page 55 in the said Transcript of Record.

15. This motion and the order to be entered thereon.

Respectfully submitted, Paul M. Segal, Harry P. Warner, 816 Connecticut Avenue, Washington 6, D. C., Attorneys for Franklin S. Pollak and Guy Martin, Respondents-Petitioners. Franklin S. Pollak, 1333 27th Street, N. W., Washington 7, D. C., Attorney *pro se*.

October 26, 1951

[fol. 179] SUPREME COURT OF THE UNITED STATES

Journal of November 13, 1951

No. 224. Public Utilities Commission of the District of Columbia, Capital Transit Company, et al., petitioners, v. Franklin S. Pollak and Guy Martin; and

No. 295. Franklin S. Pollak and Guy Martin, petitioners, v. Public Utilities Commission of the District of Columbia, Capital Transit Company and Washington Transit Radio, Inc.

The motion of Pollak et al., to print additional portions of the record is granted.

[fols. 1-155] PUBLIC UTILITIES COMMISSION

In the Matter of P. U. C. No. 3490/1. Formal Case No. 390.

Radio Reception in Busses and Streetcars of Capital
Transit Company

Date: October 27, 1949

[fols. 156-166] E. C. GIDDINGS, was called as a witness and having been first duly sworn was examined and testified as follows:

[fols. 167-168] Cross-examination.

By Mr. Pollak:

[fols. 169-199] Q. Do you know what number of passengers in a year?

A. No, I am sorry, I haven't the figures on that.

Q. What routes do they run, Mr. Giddings?

A. They operate over in the Northeast Section into Bradbury Heights and into Maryland along Pennsylvania Avenue, Alabama Avenue.

Q. Does your company also run a chartered coach service?

A. Yes, sir.

[fol. 200] HULBERT TAFT, JR., was called as a witness and, after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Dowd:

Q. Do you have any connection with any national organization interested in transit broadcasts?

A. Yes, I do. I am chairman of the Board of Directors of Transit Radio, Inc., which is a national company.

Q. When was Transit Radio, Inc. organized?

[fols. 201-339] A. In 1947.

Q. What is its purpose?

A. Well, it has three purposes. The first was to develop an FM receiver, a crystal controlled FM receiver calculated

to utilize the static-free, fine tone qualities of FM for transmission for use in buses; secondly, to exchange information concerning public reaction, program types and other information regarding the use of radios in buses throughout the country; thirdly, to represent radio stations in the sale of national advertising.

[fol. 340] NORMAN REED, was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Dowd:

Q. Will you state your name and address for the record?

A. Norman Reed, 503 East Thornapple Street, Chevy Chase, Maryland.

Q. What is your occupation?

A. Program Director of WWDC and WWDC-FM.

Q. How long have you held this position?

A. I have been program director of WWDC since the [fol. 341] station first went on the air in May of 1941 and have been program director of WWDC-FM since we first began our FM operation, which was in April of 1947.

Q. In that capacity you have been in direct charge of the programming of WWDC-FM during its hours when those programs have been received on sets of Capital Transit Company?

A. I have.

[fol. 342] Q. Are there any regulations which have been laid down by the station management which you follow with respect to commercial continuity?

A. Yes, there is. Our contract has the provision that there shall be no more than six minutes of commercial copy in any one hour. Our policy is that all announcements, whether commercial or sustaining, be limited to six minutes in any one given hour.

[fol. 343] Q. You state that the total talk, that is both commercial and sustaining announcements, is limited to six

[fol. 344] minutes in any one hour. Is there any policy with respect to the length of any single announcement?

A. Yes. Commercial announcements are limited to a maximum of 35 seconds. They vary anywhere from 15 to 35 seconds but we have set 35 as the maximum limitation.

Q. Now with this 35-second maximum and variation from 15 to 35 seconds, how often do you schedule commercial announcements?

A. In general they are scheduled once in every five minutes. However, to avoid fading out musical selections and to accommodate slight variations in the length of our newscasts, the announcements do not always occur five minutes apart. In some cases less than five minutes; in other instances considerably more, but we do maintain the five-minute average so that at no time will there ever be more than 12 announcements in any one scheduled hour.

[fol. 345] Q. Mr. Reed, on this typical program log you do not indicate commercial announcements or public service sustaining announcements. Where would those announcements appear?

A. Well, time, temperature or newscast is indicated that would accommodate either a commercial announcement or a sustaining public interest announcement.

Q. And those you say would be scheduled every five [fol. 346] minutes?

A. That is right, no more than every five minutes.

[fol. 347] By Mr. Dowd:

Q. Calling your attention to what has been marked as Exhibit No. 9, will you please state what that exhibit purports to show?

A. The first three pages of this exhibit are a composite log for Thursday, October 13 showing in column 1 the actual scheduled time for each newscast or announcement and in column 2 the actual time taken from the transmitter log that such announcement or newscast went on the air. The last four pages of the exhibit list the titles of the musical numbers and the orchestras who made the transcriptions of the music used on October 13 in the order that these selections were made.

Q. You do not indicate the exact time at which the musical selection was played?

A. No. These numbers vary from one and one-half to three and one-half minutes in length and music occupies all [fol. 348] the time in between the announcements or newscasts indicated on the log itself, the first three pages.

Q. I call your attention to Exhibit No. 10. Will you please state what that exhibit purports to show?

A. This exhibit contains all of the copy and continuity that was used on October 13. The copy has been arranged in alphabetical order other than the opening or closing announcements. This represents all copy except the actual newscasts and, as I mentioned before, the weather and temperature reports and the required station identification.

Q. How much time do the weather reports and temperature reports and station identifications occupy?

[fol. 349] A. These are standard format announcements such as, "This is WWDC-FM, Washington, music transcribed," or, "The time is 10:25."

Q. Is it proper to state then that Exhibits No. 9 and 10 truly and correctly reflect the entire program structure for WWDC-FM on October 13 between the hours of 7 a. m. and 7 p. m.?

A. Yes, with the exception, as I mentioned before, of the newscasts, time and temperature and station breaks.

Mr. Harrison: Do you mean by that that it was transmitted to the radios in the buses and street cars, Mr. Dowd?

Mr. Dowd: Yes, the operation of WWDC-FM between the hours of 7 a. m. and 7 p. m. is that which is received over the receivers installed in the Capital Transit vehicles.

By Mr. Dowd:

Q. Does October 13 represent anything exceptional in so far as the programming of WWDC-FM is concerned during these hours?

A. No, it does not. We had previously intended to select other days picked at random as proof of an average day's program but they do not contain any information that would not be covered in this particular exhibit covering the program for October 13 and were therefore omitted since

October 13 was the date that was specified by someone who was not connected in any way with the station.

The public interest spots do vary of course from time to time. At the moment the Community Chest is on. We are [fols. 350-360] giving them about 15 announcements a day. Whatever may dictate the schedule of frequent public interest announcements, we do that at that particular time, so that the public interest spots do show some variation as to content, but this is a typical day.

[fols. 361-363] BEN STROUSE was called as a witness and, having been first duly sworn, was examined and testified as follows:

[fols. 364-369] Q. There has been general discussion with respect to the programs now being received over these radio sets. Would you state what the policy is now and what it will be in the future with respect to the program format?

A. Mr. Reed has described our program pretty effectively. We have no plans for changes in that program. The music is by Muzak, as we have said several times, short newscasts of one and one-half to two minutes, weather forecasts, commercials as described, weather signals.

[fols. 370-371] Cross-examination.

[fol. 372] By Mr. Harrison:

Q. What is the basis or method of charging for a spot?

[fols. 373-369] A. Well, we have adopted the formula more or less nationally although each station sets its own rate, in the neighborhood of \$1 per thousand known riders, which is a very low rate compared to other advertising media. So, if there are 6,000 riders, our spot should sell for around \$6. This is only a rule of thumb. We have rate cards based primarily on how many riders there are in the vehicles.

Q. The number of installations in the street cars and buses would tend to increase your rate per spot as well as increase the revenue to Capital Transit Company?

A. That is correct. All advertising media sell circulation and of course the circulation increases as the number of installations goes up.

[fol. 570] CAPITAL TRANSIT COMPANY EXHIBIT NO. 1

Agreement

• This Agreement made this 13th day of December, 1948, by and between Capital Transit Company, hereinafter sometimes referred to as Capital, and Washington Transit Radio, Inc., hereinafter sometimes referred to as Radio,

Witnesseth:

Whereas, Capital operates certain street cars and busses within the Washington Metropolitan area and, as a part of its service to its patrons, desires to make available to them music, news and other entertainment and to secure revenue from advertising; and

Whereas, and for this purpose Radio is desirous of installing and maintaining the equipment necessary to receive audio communications by electronic means in the street cars and busses owned and/or operated by Capital;

Now, Therefore, in consideration of the mutual covenants herein contained, it is agreed:

I

Definitions

Wherever used herein, the following terms shall be deemed to have the following meanings:

(1) *Audio*. The term "audio" shall mean a system of broadcasting sound messages unaccompanied by visual messages.

(2) *Television*. The term "television" or "visual" shall mean visual messages accompanied by sound messages related thereto.

(3) *Right of first refusal*. "Right of first refusal" shall mean Radio's right to meet a bona fide written offer made by another to Capital. It must be exercised within thirty (30) days of written notice thereof from Capital to Radio.

(4) *Notice*. Wherever "notice" is required in this Agreement, it shall be made in writing and transmitted via registered mail to Capital at its main office, 36th and M Streets, N. W., Washington 7, D. C., and to Radio at 1000

Connecticut Avenue, N. W., Washington, D. C., unless either party by written notice to the other specifies a different place.

[fol. 571] (5) *Receivers*. "Receivers" shall mean FM radio broadcast receivers and their necessary auxiliary equipment including loudspeakers, designed for satisfactory service in mobile equipment, such as is operated by Capital.

(6) *Broadcast station*. "Broadcast station" shall mean a radio broadcasting station whose programs are received over the equipment installed by Radio in Capital's facilities for those hours of operation during which programs are so received.

(7) *Capital's facilities*. "Capital's facilities" shall include street cars, busses, terminal facilities, waiting rooms and division headquarters owned and/or operated by Capital within the Washington metropolitan district.

(8) *Annual gross transit income*. "Annual gross transit income" shall mean the total broadcast revenues collected by Broadcast Station during each twelve (12) month period for the periods of time during which programs were received over the equipment installed in Capital's facilities, after any usual and customary sales and agency commissions paid, which shall, in no event, exceed thirty per cent (30%) of the cost to the purchasers of time. A radio installation shall be deemed to exist whenever equipment has been installed by Radio in a vehicle which is in regular use, or other facility of Capital; the installation shall be deemed to have occurred in any month during which actual installation was completed prior to the fifteenth (15th) day thereof.

II

Radio's Exclusive Right to Install Audio Receiving Equipment

Radio shall have the exclusive right to install, maintain and use equipment designed to receive audio communications by electronic means, including any and all equipment required in connection therewith, in Capital's facilities and to provide for the reception of programs over such equipment during the term of this Agreement. This shall not

restrict Capital's right to install radio equipment for the purpose of transmitting orders and information to its employees, or for any other purpose not reasonably within the scope of this Agreement.

III

Installation, Maintenance and Operation of Equipment

All receivers shall be acquired, installed, repaired and maintained by Radio at its own expense.

[fol. 572] (1) *Initial (90-Day) Period.* Radio shall immediately proceed to install twenty (20) receivers in vehicles suitable for radio installation and program reception, which vehicles shall be designated by Capital upon request, and shall give Capital written notice the day when the twentieth (20th) receiver is installed. Radio shall forthwith cause program transmissions to be received over these receivers for a period of not less than eight (8) hours per day except Sunday, which programs shall be similar in all respects to those which Radio agrees herein to secure for reception over the facilities to be installed under the terms of this Agreement, and shall include commercial announcements in accordance with the standards hereinafter set forth. A period of 90 days following notice of the installation of the twentieth (20th) receiver shall be known as the initial (90 day) period hereinafter referred to.

(2) *Installation Schedule after Initial Period.* Within five (5) years from the date notice is given of the installation of the twentieth (20th) receiver, Radio shall have installed receivers in all vehicles designated by Capital as suitable for radio installation and program reception owned and/or operated by Capital which are in regular use and which have been in the possession of Capital at least ninety (90) days, and in such terminal facilities, waiting rooms, and division headquarters as are designated by Capital. The schedule of installation to be made by Radio and to be permitted by Capital shall be as follows:

(a) Within one hundred eighty (180) days from the date notice is given of the installation of the twentieth (20th) receiver, not less than a total of one hundred (100) receivers.

(b) Within one (1) year from the date notice is given of the installation of the twentieth (20th) receiver, not less than a total of two hundred (200) receivers.

(c) Within two (2) years from the date hereof, Radio shall make every effort to install receivers in all vehicles which are in regular use and are suitable for radio program reception, and in such terminal facilities, waiting rooms, and division headquarters, as Capital shall designate.

[fol. 573] (d) If at any time vehicles in which Radio has installed equipment are withdrawn from regular use, Capital shall give notice of such withdrawal to Radio which, at its sole option, may remove its equipment from said vehicles within thirty (30) days of said notice.

(3) *Periodic Inspection of Equipment.* Radio shall make periodic inspections of and maintain all the radio equipment installed by it in good operating condition, replacing all broken or defective equipment. Radio shall have no obligation to make any repairs of its equipment which becomes defective between regular inspections unless Capital shall have notified it that any such equipment is out of order.

(4) *Manner and Time for Maintenance and Repairs.* Radio shall do all work of installation, maintenance, adjusting, replacing and removal of radio equipment in such a manner and at such times as will not interfere with the regularly scheduled operation of the vehicles, provided that Radio shall not be deemed to have breached its undertaking with respect to installation, maintenance or repairs if it has been unable to gain access to the vehicles in question for adequate periods of time. Capital shall, at its own expense, provide competent personnel to advise Radio with respect to installations insofar as the installations require modification or alteration of Capital equipment. The placement of equipment shall be a matter of mutual agreement, it being understood, however, that neither party shall unreasonably withhold consent. Radio shall pay to Capital its cost of repairing any damage done to its facilities in connection with the installation, maintenance and repair work promptly upon rendition of bills for the same. Whenever any radio equipment is permanently removed from any

facility, Radio will pay to Capital its cost of restoring any part thereof affected by such removal to a condition equal to that of the remainder of the facility at the time of such removal, promptly upon rendition of bills for the same. [fol. 574] (5) *Access to Capital's Equipment.*

(6) *Notice Concerning Repairs.* Capital shall notify Radio promptly whenever any radio equipment is out of order.

(7) *Control of Receiving Equipment.* Radio shall have full control over the time or times of day that its radio equipment shall be operated, and Capital shall not turn off or disconnect the radio receiving system in any vehicles while it is operating on a regularly scheduled route, except when in the opinion of the operator of any such vehicle the radio equipment is not operating properly or the nature of the material being broadcast will jeopardize the operation of the vehicle according to normal standards of safety, or except when such vehicle is involved in an accident, and manual switches will be provided therefor. In all other instances, sets shall be turned on and off by Radio by electronic or other automatic means. It is expressly understood that the provisions of this paragraph shall not apply to equipment in vehicles operating under charter, which equipment may be turned on or off in the discretion of Capital.

IV.

Broadcast Service to be Rendered

In order to comply with its obligations hereunder, Radio will contract with a broadcast station for programs to be received in Capital's facilities for a minimum of eight (8) [fol. 575] hours per day except Sundays. Radio warrants, and as a condition precedent hereto agrees, that no contract shall be entered into by Radio with any Broadcast Station for programs which does not include the following provisions and warranties:

(a) Program content shall be of good quality and consonant with a high standard of public acceptance and responsibility, it being understood that all programs shall be carefully planned, edited and produced

in accordance with accepted practices employed by qualified broadcasting stations.

(b) Commercial announcements shall not exceed sixty (60) seconds in duration, and cumulatively shall not exceed six (6) minutes in any sixty (60) minute period.

(c) Broadcast Station shall agree to cancel or suitably to modify any commercial continuity upon notice from Capital that said continuity, or the sponsor thereof, is objectionable. Broadcast Station shall further agree that it shall give notice to Capital within twenty-four (24) hours after the acceptance of each new sponsor.

(d) Capital is to receive without charge fifty per cent (50%) of the unsold time available for commercial continuity as provided in sub-section (b) hereof, (said free time not to exceed three (3) minutes in any sixty (60) minute period), for institutional and promotional announcements. All such announcements shall be subject to approval by Broadcast Station and all such time is subject to sale without notice.

(e) Broadcast Station shall agree to indemnify and hold Capital harmless from any and all damages and claims for damages arising out of material broadcast by Broadcast Station. Capital agrees to notify Radio and Broadcast Station immediately whenever such claims for damages are made and Broadcast Station [fol. 576] shall have the right to defend or compromise any suit, claim or controversy.

(f) Broadcast Station shall submit within sixty (60) days of the close of each twelve (12) month period as hereinafter described an audit of its annual gross transit income as hereinbefore defined, prepared by a certified public accountant, and upon request by Radio or Capital, shall forthwith make available for inspection all its books of account and underlying data, specifically including cancelled checks and bank statements.

(g) Broadcast Station shall be authorized to operate as a Class B (Metropolitan) or C (Rural) FM station, or their equivalents, assigned to the City of Washington, D. C.

V

Compensation

(1) *Initial (90-Day) Period.* No compensation of any kind shall be due or payable to Capital from Radio for the initial ninety (90) day period provided for in Part III, Section (1) herein, and all compensation hereinafter referred to shall be computed from the date the ninety (90) day period referred to herein expires.

(2) *After Initial Period.* From and after the expiration of the initial ninety (90) day period provided for in Part III, Section (1) herein, compensation from Radio to Capital for each twelve (12) month period thereafter shall be at the rate of Six Dollars (\$6.00) per month per radio installation, or on the following basis, if total compensation thereunder is higher:

Where Gross Transit Income
for the 12-Month Period is
between:

Payment Due Shall Equal:

\$ 0 and \$100,000	10%
\$100,000.01 and \$200,000	\$ 10,000 plus 20% of the am't above \$100,000.01
\$200,000.01 and \$400,000	\$ 30,000 plus 33% of the am't above \$200,000.01
\$400,000.01 and \$500,000	\$ 96,000 plus 35% of the am't above \$400,000.01
\$500,000.01 and \$600,000	\$131,000 plus 45% of the am't above \$500,000.01
more than \$600,000.01	\$176,000 plus 50% of the am't above \$600,000.01

[fol. 577] (3) *Interim Payments.* In order to keep payments from Radio to Capital reasonably current, monthly cash payments are to be made as follows: At the end of each month, Capital shall give Radio a written report of the number of radio installations in regular use during that month. Within ten (10) days thereafter, Radio shall pay Capital Six Dollars (\$6.00) for each such radio installation. After the end of each three (3) month period, Radio shall submit to Capital an audit which will include gross transit income for the preceding quarter, and a cash adjustment between the parties will be made by using a projected gross annual transit income determined by assuming that the said income for the balance of the twelve (12) month period will be at the same rate as actually occurred over the preceding three (3), six (6), or nine (9) month period, as the case may be. Said projected sum shall be

divided by twelve (12) and multiplied by three (3), to determine the quarterly payment due in accordance with the schedule of charges provided for hereinabove. In making payments at the end of each such period, due allowance shall be made for previous payments during the preceding portion of each twelve (12) month period.

(4) *Annual Payments.* Within seventy-five (75) days following the end of each twelve (12) month period, a final accounting shall be made, followed by adjustments in cash payment from Radio to Capital or Capital to Radio, as the case may be, based upon the actual gross transit income for the period. Upon request of Capital, Radio shall make available for inspection all its books of account and underlying data, including cancelled checks and bank statements.

(5) *Increased Cost Refund.*

[fol. 578] (6) *Increased Cost Refund—How Determined.*

[fol. 579] (7) *Decreased Cost Refund.*

(8) *Books of Account.*

[fol. 580]

VI

Liability and Indemnification

(1) *Capital's Freedom from Liability.*

(2) *Radio's Indemnification.*

VII

Termination, Cancellation and Renewal

(1) *Following Initial 90-Day Period.* During a period of ninety (90) days from and after the date of notice of the installation of the first twenty (20) receivers in accordance with Part III, Section (1) herein, Capital shall have an unlimited right to cancel this Agreement upon fifteen (15) days' notice, the last day for giving such notice being the ninetieth (90th) day of said period. Upon notice of such cancellation, all rights of the parties to this Agreement shall terminate except Radio's right of first refusal as hereinafter set forth in Part IX, Section (2), and Capital agrees that it will not enter into any contract providing for audio broadcast reception in its facilities for a period of one (1) year from the effective date of such notice.

[fol. 581] (2) *For Failure to Install Receivers.*

(3) *For Willful Violation of Agreement.*

(4) *Unfavorable Public Reaction or Adverse Operating Condition.* In the event operations under this Agreement result in unfavorable public reaction or adverse operating [fol. 582] conditions harmful to Capital, Capital shall notify Radio in writing to this effect. Within ten (10) days after such notice, Capital and Radio shall make a joint study and determination of the condition complained of through public opinion surveys, engineering studies, or such other methods as may be applicable and useful. If such condition is verified by these means and Radio is unable to rectify it within thirty (30) days to Capital's satisfaction, Capital may cancel this Agreement upon ten (10) days' notice in writing. In the event the rectification of the said condition requires equipment changes, Radio shall have a reasonable period of time to rectify the condition. It is understood and agreed that if the parties cannot agree on the existence or harm of the condition complained of, or the question of whether it has been properly rectified, such matters shall be submitted to arbitration in accordance with Part XI hereof.

In the event cancellation occurs as above, Capital shall assume the expense of removing the equipment and shall pay Radio an amount equal to the undepreciated value of the equipment, and Radio shall convey title to all of the equipment to Capital. As used in this section, undepreciated value of the equipment shall mean actual cost to Radio of the equipment plus the following representing cost of installation: For sets which have been installed for a period of three (3) years or less, Fifteen Dollars (\$15.00) per set; for those which have been installed more than three (3) years, Ten Dollars (\$10.00) per set.

(5) *By Virtue of Order or Decree.* If substantial performance of this Agreement is prevented by final order, decree, or regulation of any court or governmental authority having jurisdiction, the following will obtain:

(a) This Agreement shall become null and void and no rights or liabilities shall accrue to either party to this Agreement, except Radio's right of first refusal specified in Part IX, Section (3) hereinafter; the provisions relating to the

disposition of equipment set out in Part VIII, Section 1 hereinafter; and the remaining provisions of this section.

[fol. 583]. (b) In the event Capital does not exercise its option set forth in Part VIII, Section (1) hereinafter, it shall pay Radio fifty (50) per cent of the depreciated cost of said equipment; said depreciated cost to be computed on a twenty (20) per cent straight line annual basis from the date of installation.

It is understood, however, that the additional payment to be made by Capital pursuant to sub-section (b) above, shall not exceed the total amount paid by Radio to Capital pursuant to the provisions of Part V herein. It is further understood that the net amount realized from the salvage of said equipment, if any, shall be divided equally between Capital and Radio.

(6) *Term of Agreement and Renewal.* The term of this Agreement shall be for a period of five (5) twelve (12) month periods from the date notice is given by Radio of the installation of the twentieth (20th) receiver, as provided in Part III, Section (1) above. It shall renew itself for one (1) additional period of five (5) years, under the same terms and conditions (exclusive of rights of renewal, options and first refusal rights) unless either party hereto gives written notice of termination by registered mail no less than one hundred and twenty (120) days before the date of expiration.

VIII

Disposition of Radio Equipment

(1) *Purchase by Capital.*

[fol. 584] (2) *On Failure to Purchase.*

IX

Options

(1) *With Respect to Television.* Radio shall have the right of first refusal to meet the terms of any bona fide offer submitted to Capital during the life of this Agreement or extensions thereof which proposes to provide television

broadcasting service subsequent to the life of this Agreement or extension thereof.

(2) *Following Cancellation After Initial (90-Day) Period.*

(3) *Following Termination.*

[ols. 585-586]

X

Broadcasts from Station Owned by Capital

Nothing herein contained shall be so construed as to prevent, hinder or limit Capital in using or accepting a program service from a station owned or controlled by it, upon the termination of this Agreement.

XI

Arbitration

XII

Resolutions

In Witness Whereof, the parties have hereunto set their hands and seals this 13th day of December, 1948.

Capital Transit Company, by (S.) E. D. Merrill,
President. (Corporate Seal.)

Attest: (S.) Wm. B. Bennett, Secretary.

Washington Transit Radio, Inc., by (S.) Ben Strouse,
President. (Corporate Seal.)

Attest: (S.) Thomas N. Dowd, Secretary.

[fols. 587-594]

EXHIBIT No. 4

Transit Customers and Transit Radio

Public Opinion Study No. 2 Made for Radio Station
WWDC-FM and Capital Transit Company, October,
1949

[fol. 595] Those 130 (6.4%) who said their rides were "less enjoyable" with radio were asked, "In what way?". On the following page, the results of October and April are compared. The weight of the overall groups of classified reasons have not particularly shifted. However, it may be noted that 4.6% of these riders attribute their dislike not to radio itself rather to a mechanical feature of broadcast reception, "not properly adjusted". On the other hand, this time we find a 3.1% specifically referring to being "forced" to listen. The importance of "safety hazard" has proportionately declined by half from April.

[fols. 596-597]

Reason	October	April
Total "Less Enjoyable".....	130 = 100.0%	138— 100.0%
Nuisance Value.....	59.2	258.6
Too much noise, confusion.....	19.2	23.2
Want to think, read, study, relax, sleep, talk.....	19.2	21.7
Annoying, nerve-wracking.....	18.5	13.0
Like quiet.....	2.3	.7
Versus Radio.....	28.4	29.0
Don't like programs.....	22.3	24.6
Not properly adjusted.....	4.6	—
Dislike radio.....	1.5	4.4
Imposition on Public.....	6.1	5.1
Forced on passengers.....	3.1	—
Not necessary.....	1.5	2.9
Not proper place.....	1.5	2.2
Safety hazard.....	2.3	5.1
No particular reason.....	3.9	2.2

Attitude towards Permanent Installations

How many riders "would . . . like such programs to become a part of regular service?" Over three-quarters of the customers would favor such a move. Only 6.6% of all riders object:

[fols. 598-601] The 133 passengers who voiced positive objection about permanent installations were asked why not? Nuisance value came up as the largest group. "Don't like programs" was also an important individual item.

Reason	October	April
Total Objectors	133 = 100.0%	149 = 100.0%
Nuisance Value	48.9	51.7
Want to think, read, study, relax, sleep	11.3	22.2
Too much noise, confusion	11.3	18.1
Annoying, nerve-wracking, irritating	21.0	11.4
Like quiet	5.3	—
Versus Radio	33.1	30.2
Don't like programs	18.8	25.5
Dislike radio	7.5	4.7
Not properly adjusted	2.3	—
Equip some, not others	3.8	—
Silence sometimes	7	—
Interference with Service	5.3	5.4
Safety hazard	3.0	5.4
Distracts operators	2.3	—
Imposition on Public	9.0	4.7
Resent being forced to listen	3.0	2.7
Intrudes on privacy	—	2.0
Not proper place	5.3	—
Not necessary	7	—
Versus Transit Company	7	2.0
Will increase fares	—	2.0
Spend on better transportation	7	—
No particular reason	2.3	6.0
No answer	7	—

[fol. 602]

EXHIBIT No. 9

STATION WWDC-FM, THURSDAY, OCTOBER 13, 1949

Page 1

7:00 8:00

Scheduled time	Actual time	
7:00	7:00	2 min newscast
7:10	7:10	time
7:15	7:14	2 min sportscast
7:20	7:19	temp
7:30	7:30	2 min newscast
7:35	7:35	time
7:45	7:44	2 min sportscast
7:50	7:48½	temp
7:55	7:56	time

Washington
Hub Furniture Co.
F.M. Program Anne.
Sombrero Room
Miller Furs
F.M. Program Anne.
Phillips Real Estate

8:00 9:00

8:00	7:59	2 min newscast	Sombrero Room
8:05	8:03½	time	Phillips Real Estate
8:10	8:11½	temp	Saks Furrier
8:20	8:20	2 min newscast	Arthur Murray Studio
8:25	8:25½	time	F.M. Program Anne.
8:30	8:31½	temp	Haber & Co.
8:35	8:37	time	Saks Furrier
8:40	8:40½	2 min newscast	Berlitz School
8:45	8:45	time	Mortons
8:50	8:50½	time	Hub Furniture Co.
8:55	8:55½	time	Wakefield Grille

STATION WWDC-FM, THURSDAY, OCTOBER 13, 1949

9:00 10:00

Scheduled time Actual time

9:00	8:59	2 min newscast	
9:05	9:05½	time	F.M. Program Anne.
9:10	9:08½	temp	Electrical Institute
9:15	9:14½	time	Haber & Co.
9:20	9:20	2 min newscast	Phillips Real Estate
9:25	9:25	time	Capital Sewing Machine
9:30	9:30½	time	Hub Furniture Co.
9:35	9:34	time	Cancer Society
9:40	9:40	2 min newscast	
9:45	9:45	time	Miller Furs
9:50	9:49	temp	Washington
9:55	9:53½	time	F.M. Program Anne.

10:00 11:00

10:00	9:59	2 min newscast	
10:10	10:12	time	Hub Furniture Co.
10:15	10:16	2 min newscast	Berlitz School
10:20	10:21	time	F.M. Program Anne.
10:25	10:24	time	Hub Furniture Co.
10:30	10:32	temp	Electrical Institute
10:35	10:36	time	Haber & Co.
10:45	10:45½	2 min newscast	Arthur Murray Studio
10:50	10:50½	time	F.M. Program Anne.
10:55	10:53½	time	Counes Restaurant

11:00 12:00

11:00	10:59	temp	Hub Furniture Co.
11:05	11:05½	time	Electrical Institute
11:10	11:09½	time	Counes Restaurant
11:15	11:15½	2 min newscast	Sombrero Room
11:25	11:24	temp	Mayfair Cafe
11:30	11:30½	temp	Castleberg's
11:40	11:40	time	Capital Sewing Machine
11:45	11:44½	2 min newscast	Arthur Murray Studio

[fol. 603]

Page 2

11:50	11:49	time	Berlitz School
11:55	11:57	time	F.M. Program Anne.

12:00 1:00

12:00	12:01	temp	Electrical Institute
12:05	12:04½	time	Hub Furniture Co.
12:10	12:11	time	Miller Furs
12:15	12:14½	2 min newscast	
12:20	12:20½	time	Irvin's Restaurant
12:25	12:24	time	F.M. Program Anne.
12:30	12:28	temp	Castleberg's
12:40	12:41	time	Phillips Real Estate
12:45	12:44½	2 min newscast	Miller Furs
12:50	12:51	time	
12:55	12:54½	time	Castleberg's

1:00 2:00

1:00	12:58½	time	Bond Bread
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STATION WWDC-FM, THURSDAY, OCTOBER 13, 1949

Scheduled time Actual time

1:05	1:07	time	F.M. Program Anne.
1:10	1:10½	time	Phillips Real Estate
1:15	1:14½	2 min newscast	Sombrero Room
1:20	1:19	time	Electrical Center
1:25	1:26	time	Merchandising
1:30	1:30	temp	Hub Furniture Co.
1:35	1:34½	time	F.M. Program Anne.
1:40	1:40½	time	Washington
1:45	1:44	2 min newscast	Bond Bread
1:55	1:55	time	Rainbow Cleaning

2:00 3:00

2:00	1:59	temp	Bond Bread
2:05	2:03	time	F.M. Program Anne.
2:10	2:08½	time	Safety Anne.
2:15	2:15½	2 min newscast	
2:20	2:20	time	Bond Bread
2:25	2:23½	time	Haber & Co.
2:30	2:30½	temp	Miller Furs
2:35	2:34	time	U. S. Employment
2:40	2:38½	time	F.M. Program Anne.
2:45	2:42½	2 min newscast	
2:50	2:50	time	Bond Bread
2:55	2:54	time	Electrical Institute

3:00 4:00

3:00	3:00	temp	Berlitz School
3:05	3:06	time	Merchandising
3:10	3:09½	time	F.M. Program Anne.
3:15	3:15	2 min newscast	
3:20	3:22½	time	Bond Bread
3:25	3:26	time	Rainbow Cleaning
3:30	3:29½	temp	Miller Furs
3:35	3:36	time	Berlitz School
3:45	3:46	2 min newscast	Arthur Murray Studio
3:50	3:51	time	Safety Anne.
3:55	3:55	time	F.M. Program Anne.

4:00 5:00

4:00	4:00½	temp	Hub Furniture Co.
4:05	4:04	time	Irvin's Restaurant
4:10	4:09	time	Bond Bread

[fols. 604-608]

Page 3

4:15	4:15	2 min newscast	Sombrero Room
4:20	4:20½	time	Merchandising
4:25	4:26	time	F.M. Program Anne.
4:30	4:29½	temp	Morton's
4:35	4:34	time	Safety
4:40	4:42	time	Cancer Society
4:45	4:45½	2 min newscast	Arthur Murray Studio
4:50	4:50	time	Capital Sewing Machine

STATION WWDC-FM, THURSDAY OCTOBER 13, 1949

5:00 6:00

Scheduled time	Actual time		
5:00	4:58½	2 min newscast	
5:05	5:05½	time	Care Anne
5:10	5:09½	time	F.M. Program Anne
5:15	5:15½	time	Truade
5:20	5:18½	2 min newscast	Berlitz School
5:25	5:26	time	Irvin's Restaurant
5:30	5:30	temp	F.M. Program Anne
5:35	5:36½	time	Electrical Institute
5:40	5:39½	2 min newscast	Arthur Murray Studio
5:45	5:45	time	Irvin's Restaurant
5:50	5:50	temp	Cancer
5:55	5:55½	time	Buckingham Market

6:00 7:00

6:00	5:59½	2 min newscast	
6:05	6:03	time	Merchandising
6:10	6:08½	temp	Buckingham Market
6:15	6:12½	time	F.M. Program Anne
6:20	6:19	2 min newscast	
6:25	6:24	time	Berlitz School
6:30	6:28½	temp	Capital Sewing Machine
6:35	6:35	time	Fat Boy Restaurant
6:40	6:39½	2 min newscast	
6:45	6:44	time	Bond Bread
6:50	6:47½	time	Truade
6:55	6:55	temp	F.M. Program Anne
7:00	6:59	sign off	

[fol. 609]

EXHIBIT No. 10

WWDC-FM

Standard Opening Announcement

Good Morning . . .

This is WWDC-FM, Washington, operating at 101.1 on your F. M. Dial.

First, the 7:00 AM headline news.

(Give Brief News Headlines)

[fol. 610]

BERLITZ SCHOOL TRANSIT RADIO

Doctor, Lawyer, Merchant, Chief . . . everybody studies language at Berlitz . . . What about you? You need a language to keep up with the Joneses and with your business. Gain the asset that makes you outstanding as an individual. Learn a language at Berlitz. Take ad-

vantage of living in a Berlitz City. Berlitz will teach you. Call Sterling 0010 today . . . ask for the blue book . . . at Sterling 0010.

Note: precede newscasts with the following:

The Berlitz School of Languages, the largest language school in the world, in Washington at 839 17th Street, Northwest, brings you the latest news . . .

[fol. 61] Once upon a time when you were very small, you learned a language so easily, so quickly and so painlessly, that you never even knew it was happening. Today by the same technique, Berlitz can teach you any language of your choice. Call Sterling 0010 and get the details of the Berlitz Easy Method of Language study. Ask for the blue booklet at Sterling 0010.

Note: Newscasts will be preceded by the following:

The Berlitz School of Language, the largest language school in the world, in Washington at 839 17th Street, N. W., brings you the latest news:

[fol. 612] BERLITZ SCHOOL WWDC-FM

Today is the day . . . Are you registered at Berlitz for French, Spanish, Russian, German? If not, go right now to take your place for this Winter Session. You need at least one extra language to meet your social and business associates on an equal footing. Do it now . . . Your Berlitz School is at 839-17th Street, Northwest.

Note: Newscasts will be preceded by the following:

The Berlitz School of Languages, largest language school in the world, in Washington at 839 17th St. Northwest, brings you the latest news:

[fol. 613] BOND BREAD TRANSIT RADIO

Two kinds of Homogenized Bond Bread in One loaf . . . the delicious Bond Bread Half-and-Half loaf: Half a loaf of white bread . . . half a loaf of wheat bread! Here's economy for small families . . . variety for All families! Get the cellophane-wrapped Bond Bread Half-and-Half loaf today!

[fol. 614] BUCKINGHAM SUPER MARKET TRANSIT RADIO

It's turkeys again at Buckingham Super Market. They're fresh killed, cleaned and drawn, all ready to be put in the oven . . . Only 69 cents a pound. To complete this tantalizing entree, don't forget those perfect U. S. No. 1 potatoes . . . a ten-pound bag for only 31 cents. The Buckingham Super Market, at 2920 Nichols Avenue, Southeast.

[fol. 615] AMERICAN CANCER SOCIETY TRANSIT RADIO

Join the Field Army volunteers for the American Cancer Society in the District today. Learn to battle cancer with information at the Field Army Headquarters in the Chastleton Hotel, 16th & R Streets, N. W. Call EXecutive 3692 for information about training courses. This is not an appeal for money. Help tell the Cancer Story. Both men and women are needed to save lives from Cancer through knowledge about the disease in the Field Army of volunteers. Join today and save lives from Cancer.

[fol. 616] CAPITAL SEWING MACHINE CO. TRANSIT RADIO

The sensational new Necchi * Sewing Machine performs 21 operations usually done by hand without the aid of a single attachment. You've seen it advertised in Good Housekeeping . . . now see it demonstrated at Capital Sewing Machine Company. Prices on electric sewing machines start as low as \$35.00 . . . with low down payments, easy terms . . . at Capital Sewing Machine Company, 804 F Street, Northwest.

[fol. 617] Thirty-nine fifty buys a rebuilt Singer Electric Portable Sewing Machine at the Capital Sewing Machine Company . . . 804 F Street, Northwest. Capital has a complete line of fine sewing machines on long easy terms. Stop in for a demonstration or arrange for a home demonstration. See the marvelous new Necchi sewing machine demonstrated at the Capital Sewing Machine Company, 804 F Street, Northwest.

(Note: Necchi pronounced Neck-ee)

* Pronounce Necchi—"Neck-ee".

[fol. 618]

CARE TRANSIT RADIO

How would You like to be a Man Without A Country? In Europe today there are millions and millions of men, women and children without a country, without adequate food, clothing or shelter. You can help a refugee cling to life with a CARE food parcel . . . twenty-two pounds of highly nutritious food for only ten dollars. Send an order Today to CARE, Dupont Circle Building, Washington.

[fol. 619]

CASTELBERG JEWELERS TRANSIT RADIO

It's easy . . . and economical . . . to do your Christmas shopping early . . . when you take advantage of Castalberg Jeweler's transit specials. Today, Castalberg's offers all transit and FM listeners . . . a beautiful 12 piece coaster set . . . perfect for gift-giving or the home . . . for just 69 cents. Visit Castalberg's and see all the other wonderful gift suggestions. Castalberg's, America's Oldest Credit Jewelers, 1004 F Street, Northwest.

[fol. 620]

COUNE'S RESTAURANT TRANSIT RADIO

Know the formula for a restaurant's success? It's simple . . . offer courteous service; fine food, and favorite beverages. That's the formula that makes Coune's Restaurant, at 637 F Street, N. W., so popular with folks. So while you're downtown, stop at Coune's and enjoy fine food, tastefully prepared. Coune's Restaurant, 637 F Street, N. W., across from The Hecht Company.

[fol. 621]

DOUGLAS PHOTOGRAPHERS TRANSIT RADIO

A thing of beauty is a joy forever. A photograph by Douglas is something you, your family or friends will treasure for years. Douglas will take a studio portrait in your home, and deliver the finished portrait within 24 hours after selection. Phone GLebe 3949. No deposit required. Call Douglas Photographers, GLebe 3949.

[fol. 622] ELECTRIC INSTITUTE TRANSIT RADIO

No. 1. For the best show in town don't miss the Electric Playhouse Friday at 2:30. Admission is free . . . no tickets needed for this hour of fascination. A play, newsreels, a fantasy of light and color . . . hundreds of ideas to make your home more beautiful, your life more gracious. Bring a friend and come Friday to the Electric Playhouse in the Pepco Building, 10th and E Northwest.

No. 2. It's a sparkling program that you should see . . . and it's free! New ways to use lighting to decorate your home, your dream kitchen with the latest electrical conveniences in operation. You'll enjoy a play, a newsreel of famous personages of the 1890's, and you'll thrill to beautiful illusions of light. It's Friday at 2:30 at the Electric Playhouse in the Pepco Building, 10th and E, Northwest. Remember the free show . . . no tickets needed . . . Friday at the Electric Playhouse. Bring your friends.

[fol. 623] FAT BOY RESTAURANT TRANSIT RADIO

Folks all over town are hurrying to the gay, modern, Fat Boy Restaurant, 2201 New York Avenue, Northeast . . . for the best in dining and dancing pleasure. For dancing, it's the popular Art Clevas. For dining, it's delicious "T" bone steak . . . at \$2.00, and delectable chicken. That's the Fat Boy Restaurant, 2201 New York Avenue, Northeast . . . For reservations, call Trinidad 9324.

[fol. 624] F. M. PROGRAM ANNOUNCEMENT (A) TRANSIT RADIO (alternate with B)

This program is being heard by home listeners, and in radio equipped buses and street cars, without cost to the Capital Transit Company or you. Actually, advertising revenues from these programs help to pay the cost of your transit ride. This is important to you in the face of higher transit operating costs.

[fol. 625] F. M. PROGRAM ANNOUNCEMENT (B) TRANSIT
RADIO

(alternate with A)

These programs are being heard by our F. M. listeners at home, as well as those of you riding on Capital Transit radio-equipped street cars and buses. The receivers and speakers aboard these vehicles have been installed by Station WWDC—FM, which broadcasts these programs without cost to the Capital Transit Company.

[fol. 626] HABER & COMPANY, TRANSIT RADIO

Here's the buy of the town, ladies . . . 100% wool Zip Coats . . . at Haber & Co., 1205 G Street, N.W. only \$38.00 . . . These were up to \$59.95 so it's a wonderful sizable saving . . . Stop in today . . . See these specially priced Zip Coats, with warm full zip-in linings . . . some are even fur lined. Only \$38.00 at Haber & Co., 1205 G Street, N.W. Charge it . . . or use layaway or budget plan.

[fol. 627] HUB FURNITURE COMPANY, TRANSIT RADIO

Storewide values, tremendous savings in every department, that's the order of the day at the Hub Furniture Company, Washington's value and credit center, 7th and D Sts., N.W. This is the Hub's 47th anniversary and one of their specials is a big, family-size electric washer with balloon wringer for only \$59.47. Low or no down-payment and easy credit terms are always available at the Hub, 7th and D Sts., N.W.

[fol. 628] IRVIN'S RESTAURANT, TRANSIT RADIO

Say, how about having fried chicken, tonight . . . chicken-in-the-rough . . . at Irvin's Restaurant, 711—13th Street, Northwest. Tonight's special . . . a big platter of crisp, tender chicken, heaps of shoe string potatoes and tangy cole slaw . . . plus soup, rolls and butter . . . Irvin's famous rum pie And coffee . . . all for \$1.50. Other tempting dinners for as little as 80 cents . . . at Irvin's Restaurant, 711—13th Street, Northwest.

[fol. 629] MAYFAIR, TRANSIT RADIO, TF

It's not far to enjoyment when you stop at the Mayfair. Just below F Street at 527 13th, the Mayfair serves delicious, well-planned luncheons to please *every appetite*. You'll like the Mayfair's quiet comfort and excellent service. For luncheon, or party reservations, call Metropolitan 9326. Never a cover, minimum or tax at the Mayfair, open 11 to 1 daily . . . Saturdays until midnight, at 527 13th Street, N.W.

[fol. 630] People come from far and near . . . to wine and dine and have fun there. Where? The Mayfair? It's a wonderful place, downtown at 527—13th Street . . . The atmosphere is perfect for relaxing, talking or enjoying delicious food. Music by the Sammy Seymour trio . . . Never a cover, minimum or tax . . . at the Mayfair, 527—13th Street, open daily from 11 to 1 . . . Saturday until midnight.

[fol. 631] MERCHANDISING COPY, TRANSIT RADIO

If you live in Mt. Pleasant . . . you'll find it convenient to buy everything on your grocery list . . . at the Pleasantway self-service Market . . . 3127 Mt. Pleasant Street, N.W. Or if you shop in Lincoln Park . . . you'll find select fruits and vegetables at Hardesty's Service Market . . . 1504 East Capitol St.

[fol. 632] There's a D.G.S. store near you! Columbia Heights shoppers will find the service is the finest and the quality is the best at . . . The Gordon D.G.S. Market . . . 2740—14th Street, N.W. Or if you shop in Friendship Heights . . . you'll find it convenient to buy your grocery needs at The Jenifer Market . . . Wisconsin Avenue and Jenifer Streets, N.W.

[fol. 633] MERCHANDISING COPY, LARIMER'S SUPER MARKET & TERMINAL MARKET, TRANSIT RADIO

—Here's a suggestion for you Dupont Circle Shoppers! You'll find the best in fruits and vegetables at Larimer's Super Market . . . 1727 Connecticut Avenue, Northwest. Or if you shop in Shepherd Park, you'll find it convenient to shop at the Terminal Market . . . 7833 Eastern Ave.

nue, N.W. Remember, if you hear it on the car or bus, you can buy with confidence.

[fol. 634] MILLERS FURS, TRANSIT RADIO

Ladies! Now, have your old fur coat remodeled into a new, luxuriant fur fashion. It can be done in a much shorter time . . . with excellent workmanship guaranteed . . . at a truly moderate cost . . . at Millers newer, greater fur store, 1231 G Street, Northwest. Bring your coat in . . . discuss with Mr. Miller or any of his dependable furriers, the new fashion for your coat. That's Millers New Fur Store—1231 G Street, N.W. Go in there today.

[fol. 635] MORTON'S, TRANSIT RADIO

Mothers . . . Every Day is Sale Day in Morton's Babyland. Large, 27 by 27 inch Birdseye Diapers are Only \$1.59 every day in the week! And, famous Birdseye Diapers for as little as \$1.59 is typical of the great cash-and-carry savings you'll find on All cold weather clothes in Morton's Babyland. At Morton's . . . just above Pennsylvania Avenue, on Seventh Street, Northwest.

[fol. 636] ARTHUR MURRAY, TRANSIT RADIO

Open:

The Arthur Murray Dance Studios . . . 1106 Connecticut Avenue . . . can show you the way to more fun . . . more popularity. But first, the news.

Close:

It's a wonderful feeling to know you can hold your own on a dance floor with any partner . . . any music. That self-confidence is yours for life . . . when you enjoy Arthur Murray's individualized instruction. If you want to brush up on the newest steps . . . specialize in your favorite dance . . . or if you've never danced before . . . there's an Arthur Murray course designed just for you. For a free trial lesson, visit the Arthur Murray Dance Studios . . . 1106 Connecticut Avenue. Open daily from 10 AM to 10 PM. Telephone Executive 4100.

[fol. 637] Open:

The Arthur Murray Dance Studios . . . 1106 Connecticut Avenue . . . can show you the way to more fun . . . more popularity. But first, the news.

Close:

Mother, does your daughter enjoy a whirl of popularity? If she spends most evenings at home . . . or watching *other* people dance . . . let Arthur Murray come to the rescue. As she becomes a good dancer, she'll develop poise and self-confidence . . . make friends . . . have a wonderful time. Give her the very best individualized instruction at the Arthur Murray Dance Studios . . . open daily from 10 AM to 10 PM. 1106 Connecticut Avenue . . . Executive 4100.

[fol. 638] (Opening)

The Arthur Murray Dance Studios . . . 1106 Connecticut Avenue . . . can show *you* the way to more fun . . . more popularity! But first, the news.

(Closing)

It's not enough to *work well* . . . you need fun and relaxation too! After a hard day's work, dancing at Arthur Murray's is a real pick-up . . . one of the most healthful diversions you can enjoy. An Arthur Murray course brings your dancing up to date . . . gives you a new self-assurance and vibrant, released personality. Learn to relax . . . and Like it! For a free trial lesson, visit the Arthur Murray Dance Studios . . . 1106 Connecticut Avenue. Open daily from 10 AM to 10 PM. Telephone Executive 4100.

[fol. 639] PHILLIPS AND COMPANY, TRANSIT RADIO, TF

Phillips and Company, 1713 K Street, Northwest, presents in Chevy Chase a lovely detached all brick, slate roof home. Three beautiful bedrooms and two baths, full finished attic, large living room, full den and modern kitchen. Full basement, one-car garage on a large lot convenient to stores and schools. See them today for this bargain and unusual

financing. That's at Phillips and Company, Sterling 3323, remember Sterling 3323.

[fol. 640] Mr. and Mrs. Homeowner . . . would you like to sell your real estate for a top market price? Phillips and Company at 1713 K Street, N. W., have clients waiting for your property. Phone Sterling 3323 . . . Phillips and Company will have one of their friendly representatives call on you. Sterling 3323.

[fol. 641] October 11, 1949 TF

Phillips and Company . . . Real Estate, at 1713 K Street, Northwest offers a new, masonry constructed home . . . with two large bedrooms, a spacious living room, lovely dining room, modern kitchen, and full basement . . . plus air conditioned heat and a large lot for only \$10,500. It's in Chesterbrook . . . and it's a real buy. For an appointment, call Sterling 3323 . . . Phillips and Company, Sterling 3323.

[fol. 642] RAINBOW DYEING AND CLEANING, TRANSIT RADIO

Stay as sensible as you are, housewives! The Rainbow Dyeing and Cleaning Company are experts in dyeing your draperies, slip covers and All Household accessories . . . any color of the rainbow! This means *new*, glowing fall beauty for your home at comparatively *little* expense. Dyeing or cleaning, call Rainbow—Atlantic 6400 . . . Free pick-up and delivery . . . that's Atlantic 6400.

[fol. 643] Attention, Housewives! It's fall cleaning time! Send your draperies, slip covers and All accessories to the Rainbow Dyeing and Cleaning Company . . . their colors will come back fresh and glowing. Call Atlantic 6400 . . . say you heard this announcement and get a *10% discount!* That's Rainbow Dyeing and Cleaning . . . Atlantic 6400 . . . Free pick-up and delivery!

[fol. 644] SAFETY, TRANSIT RADIO

You, too, can help make Washington a safer place to live and work. Be careful crossing streets. Watch the traffic lights. Cross *only* when the signal is green. The Traffic lights are for your protection. Heed them and avoid danger.

[fol. 645] SAFETY No. 3, TRANSIT RADIO

When you alight from a street car or bus, walk to the corner before crossing the street. Avoid Accidents by being alert to danger. Help make Washington a safer place to live and work by being careful . . . today and everyday.

[fol. 646] SAFETY No. 1, TRANSIT RADIO

Stop and look! When you cross the street, cross only at crosswalks. Look in both directions. Cross only when the light is green, or when the signal says Walk. You can help make Washington the safest city in the nation by Always being on the alert.

[fol. 647] MERCHANDISING COPY, TRANSIT RADIO

Are you a Chevy Chase Shopper? Then decide to get the highest quality meats and vegetables. Always shop at the Chevy Chase Supply Company's big super market at 5630 Connecticut Avenue, N. W. Or, if you live in Trinidad, you'll find a complete selection of everything for your table at Dave's Super Market, 1725 Montello Avenue, N. E.

[fol. 648] SAKS FURS, TRANSIT RADIO, OCTOBER 13, 1949

Ladies . . . take your choice of Mouton . . . Muskrat . . . or Mink . . . but *make* your choice at Saks, for the *lowest* fur prices imaginable! Mouton-dyed lamb . . . your warm, versatile coat, for only, \$95 plus tax! Prime Northern-Back Muskrat . . . just \$235, plus tax! And silky, luxurious dyed China Mink . . . unequalled at \$345, plus tax! All Three at Saks . . . furriers of distinction since 1888 . . . at 610 12th Street, N. W.

[fol. 649] BURLINGTON HOTEL (SOMBRERO ROOM), TRANSIT RADIO

The famous Sombrero Room in the Burlington Hotel, 1120 Vermont Avenue, Northwest, features two grand dinner specials every night—one, a thick juicy tenderloin steak for only a dollar seventy-five . . . the other, delicious tender roast prime ribs of beef for a dollar and a half. Try

these delightful dinner specials with your favorite drinks at the famous Sombrero Room, right downtown.

Note: When sponsoring news, add: "Here is the latest news, brought to you by the famous Sombrero Room—"

[fol. 650] TRU-ADE, TRANSIT RADIO

The best refresher Ever Bottled! That's what Washington says about Tru-Ade . . . the beverage with Triple Taste Appeal! *Taste* Tru-Ade's delicious *real fruit flavor!* Trust Tru-Ade's pasteurized purity . . . lasting vacuum sealed freshness! Enjoy Tru-Ade's natural goodness, unspoiled by carbonation or artificial preservatives. The best refresher Ever Bottled . . . that's Tru-Ade! Get Tru-Ade in bottle, carton, or case Today!

[fol. 651] The perfect refreshment everytime you're thirsty . . . *different, delicious* Tru-Ade! Tru-Ade's a new kind of bottled beverage . . . all rich *real-fruit* flavor with a natural sparkle that's no kin to carbonation, or artificial preservatives. Tru-Ade's appeal is *lasting* . . . its goodness is pasteurized and vacuum-sealed to stay wholesome and fresh to the last tangy sip. Try Tru-Ade in bottle or carton today.

[fol. 652] U. S. EMPLOYMENT SERVICE, TRANSIT RADIO

The United States Employment Service reminds employers that your best bet . . . is to hire a vet. Call the United States Employment Service for careful selection of Veterans for any type of job. There are thousands to choose from according to *your* specifications. Telephone District 7000.

[fol. 653] WAKEFIELD GRILL, TRANSIT RADIO

There's no doubt about it . . . the Wakefield Grill, 920 F Street, Northwest, is rapidly gaining a reputation for serving the best old-fashioned lunches in town . . . at down-to-earth-prices. Today, Wakefield is offering an electronically cooked Cheeseburger luncheon platter for a mere 50 cents, including crisp french fries, cole slaw, coffee or tea. Today, at Wakefield Grill, cheeseburger luncheon : . . 50 cents . . . 920 F Street, Northwest.

[fol. 654] OUR WASHINGTON #6 TRANSIT RADIO, F. B. I. #1

Are you the proud parent of a junior G-Man? Give him the thrill of his life by taking him on a F.B.I. G-Man tour. Each weekday, Monday thru Friday, from 9:30 to 4:00 PM., the Department of Justice shows its visitors just how the F.B.I. does its job . . . they explain their finger print system, tour the crime detection laboratories, and visit the fire arm laboratory, where a special agent gives a lively exhibition of G-Man guns in action. For information on how to reach the Department of Justice . . . call Michigan 6363.

[fol. 655] OUR WASHINGTON ZOO #2 TRANSIT RADIO

Do you know what a Pigmy Marmoset is? It's a monkey . . . the tiniest kind of monkey in the whole world. They're usually found in South America . . . but we have two of them right here in Washington at our National Zoological Park. You can see these amusing Pigmy Marmosetts and thousands of other rare animals, birds and reptiles, today and everyday between 9 and 5 . . . at the Zoo. For information on how to get there . . . call the Capital Transit Company at Michigan 6363.

Marmoset is pronounced "Mar-mo-Zet."

[fol. 656] OUR WASHINGTON, TRANSIT RADIO

Are you visiting Washington? The Washington Board of Trade's Greater National Capital Committee suggests you visit the Library of Congress. Located directly across from the Capitol Building, the library, which is the largest in the world, contains the original copies of the Declaration of Independence and our Constitution . . . plus other interesting exhibits. For information on how to reach the Library of Congress . . . call Capital Transit . . . at Michigan 6363.

[fol. 657] SIGN-OFF, TRANSIT RADIO

Each weekday, starting at seven A.M., we bring you a program of transcribed music, with latest news headlines, temperature and weather reports, and information of timely interest. These programs are heard by our F M listeners

at home, as well as those of you riding on Capital Transit radio-equipped buses and streetcars. The receivers and speakers aboard the buses and streetcars have been installed by WWDC-FM, which broadcasts these programs without cost to the Capital Transit Company. This concludes our separate F M programming for today . . . The time is seven P.M. This is WWDC—FM, Washington. (Pause) For the continuation of our schedule, we now join the regularly scheduled programs of WWDC.

[fols. 658-662] BEFORE PUBLIC UTILITIES COMMISSION OF THE
DISTRICT OF COLUMBIA

P. U. C. No. 3490/1

Formal Case No. 390

In the Matter of Radio Reception in Busses and Street Cars
of CAPITAL TRANSIT COMPANY

Application of

FRANKLIN S. POLLAK, Intervener

and

GUY MARTIN, Intervener

For Reconsideration and Other Relief

Attorneys: Franklin S. Pollak, for Himself; Guy
Martin, for Himself.

[fol. 663] On December 19, 1949 this Commission issued its Order No. 3612 dismissing the investigation previously ordered by it in this matter.

In accordance with Paragraph 64 of Section 8 of the Act of March 4, 1913, as amended, and Chapter 14 of the Commission's Rules of Practice and Procedure, we hereby apply for reconsideration of the matters involved in the Commission's order of dismissal.

Specifically, and in addition, we ask for the following relief, as set forth hereinafter in more detail.

We ask the Commission, on notice to Capital Transit Company and Washington Transit Radio, Inc. ("respondents"), to amend its Order of Investigation herein, Order No. 3560, so as to refer therein specifically to all the statutory powers of this Commission applicable to a determination of whether the broadcasts here in question should be approved, and so as to state that the investigation, under those powers, is for the purpose of determining whether the broadcasts should be approved. After such amendment and [fols. 664-717] due notice thereof, we ask the Commission to make the findings of fact proposed in our brief dated and filed November 23, 1949, and to prohibit the reception of these broadcasts. In requesting that the Order of Investigation be so amended we do not concede that the Commission lacks power to prohibit the reception of these broadcasts under the existing Order of Investigation.

[fol. 718] UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA

Public Utilities Commission of the District of Columbia,
Washington 4, D. C.

Civil Action No. 1655-50 May 1, 1950.

FRANKLIN S. POLLAK, 1333—27th Street, N. W., Washington
7, D. C., and Guy Martin, 3117 Woodley Road, N. W.,
Washington 8, D. C., Petitioners,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA,
and James H. Flanagan, Gordon R. Young, and Kenneth
W. Spencer, Constituting the Public Utilities Commission
of the District of Columbia, Respondents

Civil Action No. 1694-50

TRANSIT RIDERS ASSOCIATION, Unincorporated, 2017 S Street,
N. W., Washington, D. C., Consisting of Claude N. Palmer,
President, 8010 Eastern Drive, Silver Spring, Maryland,
Raymond A. Seelig, Vice-President, 3260—16th Street,
N. W., Washington, D. C.; Otto G. Janssen, Secretary-
Treasurer, 3830—39th Street, N. W., Washington, D. C.,
and Others Too Numerous to List Individually, Petition-
ers,

v.

[fol. 719] PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF
COLUMBIA, Respondent

Civil Action No. 1716-50

PAUL NATHANIEL TEMPLE, Residence 901 Garland Avenue,
Takoma Park, Maryland, Office 1625 K Street, N. W.,
Washington, D. C., Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA,
Respondent

CERTIFICATION OF RECORD ON APPEAL—Filed May 1, 1950

There is transmitted herewith the record in P. U. C. No.
3490/1, Formal Case No. 390, before the Public Utilities
Commission of the District of Columbia, "In the Matter of

Radio Reception in Busses and Street Cars of Capital Transit Company." The said record is transmitted in accordance with provisions of Paragraph 65 of the Act of March 4, 1913 (Sec. 43-705 D. C. Code), creating the Public Utilities Commission, as amended by the Act of August 27, 1935.

The record consists of the following:

1. Order No. 3560, dated July 14, 1949.
2. Letter of National Gateway Citizens' Association dated February 22, 1949.
3. Letter of Burleith Citizens Association dated April 18, 1949.
4. Notice of hearing.
5. Petition of Washington Transit Radio, Inc., for leave to intervene.
6. Letter of Mid-City Citizens Association, undated.
7. Letter of Stanton Park Citizens Association, dated October 3, 1949.
- [fol. 720] 8. Letter of Fort Davis Citizens' Association, dated October 5, 1949.
9. Resolution of Manor Park Citizens Association, dated October 6, 1949.
10. Letter of Shipley Terrace Citizens Association, dated October 4, 1949.
11. Letter of Kalorama Citizens Association, dated October 14, 1949.
12. Letter of District of Columbia Industrial Union Council, C. I. O., dated October 19, 1949.
13. Letter of Northeast Business Men's Association, Inc., dated October 20, 1949.
14. Petition of Robert W. Burton, on behalf of Burleith Citizens Association, October 21, 1949, for leave to intervene.
15. Petition of Franklin S. Pollak, October 21, 1949, for leave to intervene.
16. Petition of Guy Martin, October 21, 1949, for leave to intervene.
17. Letter of National Federation of Post Office Clerks, dated October 21, 1949.
18. Letter of Local No. 2, National Federation of Federal Employees, dated October 20, 1949.

19. Letter of National Association of Letter Carriers, dated October 21, 1949.

20. Letter of Trinidad Citizens Association, dated October 22, 1949.

21. Letter of Lincoln Park Citizens Association, dated October 21, 1949.

22. Letter of Crestwood Citizens Association, dated October 25, 1949.

23. Letter of Wendell Rynerson, dated October 29, 1949.

24. Four petitions.

25. Letter of Brightwood Citizens Association, dated October 21, 1949.

[fol. 721] 26. Letter of The Georgetown Citizens Association, dated October 25, 1949.

27. Letter of MacArthur Boulevard Citizens Association, dated October 26, 1949.

28. Letter of The Dupont Circle Citizens Association, dated October 26, 1949.

29. Telegram of American Federation of Government Employees, dated October 26, 1949.

30. Letter of Recorded Music Society of Washington, D. C., dated October 27, 1949.

31. Telegram of 16th Street Highlands Citizens Association, dated October 27, 1949.

32. Letter of Ivy City Citizens Association, Inc., dated October 27, 1949.

33. Letter of Star-Times Publishing Co., St. Louis, Mo., through its Attorney William Thomson, files its appearance.

34. Petition of Paul N. Temple, Jr., for leave to intervene.

35. Letter of The Forest Estates Citizens' Association, dated November 1, 1949.

36. Letter of The Wheel of Progress, dated November 1, 1949.

37. Letter of the Federation of Citizens Associations, dated October 12, 1949.

38. Letter of Minnesota Center Citizens Association, dated November 4, 1949.

39. Telegram of Bernard Tassler for National Assembly for the Advancement of Public Relations; dated October 31, 1949.

40. Letter of Connecticut Avenue Citizens Association, dated November.

41. Motion of Awalt, Clark & Sparks to correct the record.

42. Motion of Franklin S. Pollak and Guy Martin to correct the record.

[fol. 722] 43. Letter of Progressive Citizens Association of Georgetown, dated November 22, 1949.

44. Copy of letter of Congress Heights Citizens Association, dated November 26, 1949.

45. Transcripts of hearing for October 27, 28, 31, and November 1, 1949.

46. Exhibits 1 through 13, with exception of No. 12 which was not admitted. (See pages 383 and 384 of Transcript).

47. Findings and Order No. 3612, dated December 19, 1949.

48. Applications of Franklin S. Pollak and Guy Martin, interveners, for reconsideration of Order No. 3612.

49. Petition of Hector G. Spaulding, et al., for reconsideration of Order No. 3612.

50. Application of Transit Riders' Association for reconsideration of Order No. 3612.

51. Petition of Paul N. Temple, Jr. for reconsideration of Order No. 3612.

52. Application of Bernard Tassler for National Citizens Committee Against Forced Reading and Forced Listening.

53. Letter of Paul Sifton, dated January 18, 1950.

54. Petition of Progressive Citizens Association of Georgetown for reconsideration of Order No. 3612.

55. Order No. 3631, dated February 15, 1950, denying petitions for reconsideration of Order No. 3612.

By direction of the Commission:

E. J. Milligan, Executive Secretary. (Seal.)

I, E. J. Milligan, Executive Secretary of the Public Utilities Commission, hereby certify that the documents designated hereinabove constitute the true and correct record and [fol. 723] transcript of proceedings before the said Commission in the above stated cause.

In testimony whereof, I hereunto subscribe my name and affix the Seal of the Public Utilities Commission this 1st day of May, 1950.

E. J. Milligan, Executive Secretary. (Seal.)

Enclósures.

[fol. 724] IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 1655-50

FRANKLIN S. POLLAK, Petitioner, 1333 27th Street, N. W.,
Washington 7, D. C., and Guy Martin, Petitioner, 3117
Woodley Road, N. W., Washington 8, D. C.,

against

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA
and James H. Flanagan, Gordon R. Young and Kenneth
W. Spencer, Constituting the Public Utilities Commission
of the District of Columbia, Respondents

DESIGNATION OF RECORD ON APPEAL—Filed July 26, 1950

The Clerk will please prepare the record on appeal herein and include the following:

1. Petition of appeal filed April 13, 1950.
2. Motion to dismiss filed by Capital Transit Company May 2, 1950.
3. Motion to dismiss filed by Washington Transit Radio, Inc., May 2, 1950.
4. Motion of the respondents to dismiss the petition of appeal, filed May 3, 1950.
5. Order granting motion of John O'Dea, People's Counsel, to intervene, filed May 10, 1950.
- [fols. 725-726] 6. Order granting intervention by Capital Transit Company, filed June 1, 1950.
7. Order granting intervention by Washintgon Transit Radio, Inc., filed June 2, 1950.
8. Order dismissing petition of appeal on motion of the respondents, filed June 15, 1950.

9. Order dismissing petition of appeal on motion of Capital Transit Company, filed June 15, 1950.

10. Order dismissing petition of appeal on motion of Washington Transit Radio, Inc., filed June 15, 1950.

11. The opinion of the Court dated June 1, 1950; filed July 5, 1950.

12. Notice of appeal filed July 14, 1950.

13. Statement of the points on which the appellants (petitioners) intend to rely.

14. This designation.

Paul M. Segal, Harry P. Warner, Quayle B. Smith,
816 Connecticut Avenue, Washington 6, D. C.,
Attorneys for the plaintiff.

July 26, 1950.

[fol. 727] IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

[Title omitted]

RESPONDENTS'-INTERVENORS' COUNTER-DESIGNATION OF
RECORD ON APPEAL—Filed August 4, 1950

The Public Utilities Commission of the District of Columbia, Capital Transit Company, and Washington Transit Radio, Inc., Appellees in the above-entitled cause, hereby designate the following parts of the record to be included in the transcript on appeal in addition to those designated by the Petitioners-Appellants; such additional parts being deemed necessary and material for a determination of the questions raised on appeal; namely, the following portions of the record of the proceedings before the Public Utilities Commission of the District of Columbia in its Formal Case No. 390, certified and filed with the Court, herein pursuant to the provisions of Section 43-705, D. C. Code, 1940, by the Secretary of the Commission under date of May 1, 1950:

I. (Item 1) Order No. 3560, dated July 14, 1949.

II. (Item 4) Notice of Hearing, dated September 19, 1949.

III. (Item 45) Portions of the testimony from the transcripts of hearing before the Commission on October 27, 28, 31, and November 1, 1949, as follows:

[fol. 728]

Witness	Beginning		Ending	
	Page	Line	Page	Line
Lorane T. Johnson.....	5	14	6	13
William H. Voltz.....	7	2	8	3
F. A. Sager.....	8	11	13	7
	16	4	16	13
E. C. Giddings.....	156	16	166	19
	168	18	169	9
	199	4	199	9
Hulbert Taft, Jr.....	200	2	206	7
R. L. Willoughby.....	215	9	221	2
E. L. Keller.....	223	2	227	22
I. S. Nichols.....	229	3	234	3
K. C. McClosky.....	234	13	241	23
Max F. Ryan.....	242	16	249	16
Andrew Sarkady.....	250	6	254	7
	261	18	263	8
	264	6	265	17
Edward G. Doody.....	268	20	292	7
	312	8	312	21
Donald O'Neill.....	315	20	326	23
Norman Reed.....	340	14	351	10
Ben Strouse.....	361	22	373	13
	385	1	385	19
	397	1	398	14
Frank F. McIntosh.....	399	9	411	10
Ross H. Beville.....	443	5	453	24

IV. (Item 46) Certain of the Exhibits before the Commission as follows:

- Exhibit No. 1
- Exhibit No. 2
- Exhibit No. 3
- Exhibit No. 4
- Exhibit No. 5
- Exhibit No. 8
- Exhibit No. 9
- Exhibit No. 10
- [fol. 729] Exhibit No. 11
- Exhibit No. 13

V. (Item 47) Findings and Order No. 3612, dated December 19, 1949.

VI. (Item 48) Applications of Franklin S. Pollak and Guy Martin for Reconsideration of Order No. 3612.

VII. (Item 50) Application of Transit Riders' Association for Reconsideration of Order No. 3612.

VIII. (Item 55) Order No. 363I, dated February 15, 1950.

IX. The Certificate of the Secretary of the Commission, dated May 1, 1950, accompanying the Commission's Record.

10. This Counter-Designation.

Dated at Washington, D. C. this 4th day of August, 1950.

Lloyd B. Harrison, District Building, Washington, D. C., Attorney for Public Utilities Commission of the District of Columbia. Edmund L. Jones, Colorado Building, Washington, D. C.; F. G. Awalt, Daryal A. Myse, 822 Connecticut Ave., N. W., Washington 6, D. C., Attorneys for Capital Transit Company. W. Theodore Pierson, 1007 Ring Building, Washington, D. C., Attorney for Washington Transit Radio, Inc.

[fols. 730-731] Certificate of Service (omitted in printing).

[fol. 732] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION TO TRANSMIT RECORD BEFORE PUBLIC UTILITIES COMMISSION TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT—Filed August 24, 1950

The plaintiffs move that the original record before the Public Utilities Commission on file in the District Court be transmitted to the United States Court of Appeals for the District of Columbia Circuit.

In support of this motion the plaintiffs allege and the parties stipulate:

1. Counsel for the respondents and the intervenors have designated for certification substantial portions of the record before the Public Utilities Commission.

[fols. 733-734] 2. The Clerk of the Court can expedite the transferral of the record in the District Court to the Court of Appeals by transmitting the entire record before the Pub-

lic Utilities Commission rather than by copying and extracting only the designated portions.

3. This motion is filed at the suggestion of and for the convenience of the Clerk of the Court!

4. Counsel for respondents and intervenors consent to the granting of this motion upon the basis of the stipulation herein.

5. It is stipulated that only those portions of the record before the Public Utilities Commission which have been designated by respondents and intervenors will be considered as certified to the United States Court of Appeals for the District of Columbia Circuit.

6. It is further stipulated that this motion and the order of the Court thereon shall be transmitted to the Court of Appeals as a part of the record.

Harry P. Warner, Quayle B. Smith, 816 Connecticut Avenue, Washington 6, D. C., Attorneys for the Plaintiffs.

August 24, 1950.

[fol. 735] IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

[Title omitted]

ORDER—Filed August 24, 1950

Upon consideration of plaintiffs' motion requesting that the original record before the Public Utilities Commission be transmitted to the United States Court of Appeals for the District of Columbia Circuit; and upon consideration of the stipulation by the parties that only those portions of the record before the Public Utilities Commission which have been designated by respondents and intervenors will be considered as certified to the United States Court of Appeals for the District of Columbia Circuit; the motion is hereby granted this 24th day of August, 1950.

Burnita Shelton Matthews, Judge.